

BAHRAIN'S

BUSINESS ENVIRONMENT



Consultant Editor: Phillip Dew

a **guide** to market potential and the
rules of commercial engagement

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Bahrain's Business Environment

GLOBAL MARKET BRIEFINGS

Bahrain's Business Environment

Consultant Editor:
Philip Dew



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Foreword

When it comes to doing business with Bahrain, there has never been a better time to set up in the Kingdom. The Gulf is booming, and Bahrain has placed itself firmly at heart of its growth, with an approach that focuses on sustainable success over the long term – for the country and for businesses.

Bahrain has long been recognized as a regional pioneer. We were the first in the Gulf to discover oil, the first to diversify our economy, the first to introduce universal suffrage and have been first for finance in the Middle East for more than three decades.

Now, in a newly globalized era, we have a clear vision for our economy and our people that will allow us to regain our pre-eminent position; that will enable us to compete with the best in the world at every level. At the Economic Development Board, we are working with our partners in government and the private sector to make that happen.

We have strived to create the best possible environment for business growth, and we work equally hard at maintaining it. At the beginning of 2008, The Heritage Foundation and *The Wall Street Journal* ranked us the freest economy in the Arab World for the 14th year in succession. In fact, we were among the top 20 freest nations in the world, ahead of France, Germany and Spain; a clear result of our open and welcoming approach across trade freedom, business freedom, investment freedom and property rights.

We are also attracting increasing levels of FDI (foreign direct investment). The UN Conference on Trade and Development's World Investment Report 2007 saw our level of FDI almost triple in the space of a year, placing Bahrain at 11th position globally in the performance category – a significant achievement.

Much of our success comes as a result of our comprehensive reforms across all aspects of politics and economics and our joined-up approach to developing and planning for future success.

We also benefit from our superb strategic location at the heart of the Gulf, with outstanding sea and air links plus direct road access via the King Fahd causeway to the region's largest market, Saudi Arabia, with a second causeway to Qatar now under development. Another key selling point is the lowest tax regime in the region – not just in dedicated free zones but across the entire Kingdom, which provides real business and employee incentives.

When you add to that our talented and dedicated labour force, competitive factor costs and a cosmopolitan living and working environment with a welcome that typifies the best of Arabian hospitality, you can begin to

understand why it is time you started doing business with Bahrain. We look forward to working with you soon.

Shaikh Mohammed bin Essa Al-Khalifa
Chief Executive, Bahrain Economic Development Board

Foreword

Bahrain is a good country in which to be a Brit. All foreigners lucky enough to live here enjoy the friendliness and openness of Bahraini society. But the long and warm friendship between Bahrain and the United Kingdom gives our relationship a special quality: many Bahrainis have close ties with Britain through education, business or just as regular visitors. At least 8,000 British citizens live in Bahrain and many times this number visit every year.

Business has always been a key element of this relationship. Bahrain's importance as a centre of commerce rests on its historical position as a hub of activity in the Gulf. The first commercial flight between Europe and the Gulf was between London and Bahrain in 1932. Bahrain was the first international financial centre in the Gulf. British banks have been here since 1920.

The business relationship between our two countries is now more important, and perhaps more vigorous, than ever. Bahrain's economy is booming. Growth in 2007 was around 6.7 per cent and in 2008 is expected to be similar. British companies in a range of disciplines are involved in the major construction projects that can be seen along Bahrain's north coast and elsewhere. British cars are plentiful on Bahrain's roads and British names in Bahrain's shopping malls. Many of Bahrain's industrial companies use British expertise and trade with British partners. British companies from the public relations, health care, management consultancy, security and defence sectors have offices in Bahrain.

Given the centrality of the financial services to Bahrain's economic strategy, it is unsurprising that there is a particular focus on this sector. British banks, insurers and law firms all have a presence here. Bahraini banks are significant investors in the United Kingdom. Both sides are keen to see the relationship between the city of London and Bahrain grow. Bahrain has many attractions to our financial services sector: a world class regulator, a central position in the Gulf, a skilled local workforce and lower costs than elsewhere in the region.

I hope that British companies unfamiliar with Bahrain will explore the opportunities it offers and that Bahraini traders and investors will do the same in the United Kingdom. The Embassy is here to help you do so, please contact us via britemb@batelco.com.bh.

H.E. Jamie Bowden

British Ambassador to the Kingdom of Bahrain

Foreword

I am delighted to provide the foreword to this useful publication.

Bahrain's commitment to growth through political, social and economic reforms has made her one of the world's most investor-friendly economies. In fact, the 2007 Index of Economic Freedom, published by the Heritage Foundation in co-operation with *The Wall Street Journal*, shows that Bahrain has the most open economy in the Arab region.

A number of initiatives to attract overseas investment include a highly favourable tax environment, allowing full foreign ownership of most categories of business and no restriction on repatriation of capital, profits or dividends. Investors are also supported by a mature legal, regulatory and administrative infrastructure. As a result, economic growth reached 7 per cent in 2007 (10 per cent in the non-oil sector) but inflation remained low at under 3 per cent a year.

The attractiveness of the business environment can be most clearly seen in the financial sector in which Bahrain has become a leader in the Gulf. It now has the largest concentration of licensed financial institutions in the region. Other sectors are also booming – telecommunications, heavy industry and petrochemicals benefit not only from economic incentives but also from the Kingdom's geographical location. For thousands of years Bahrain's position in the Arabian Gulf has made it a natural focus for trade. Today, the world-class international airport, the causeway to Saudi Arabia (the largest market in the Gulf), and the forthcoming causeway to Qatar give the Kingdom some of the best connections in the region.

Bahrain's strong heritage as a trading nation has fostered a progressive society; tolerant and open to outside influences and ideas. This is reflected not only economically but also socially. Bahrain's liberal, cosmopolitan people, many of whom have been educated abroad, relish the opportunity to work alongside foreign nationals to make their country one of the most vibrant in the world in which business and society can thrive.

I hope this helpful guide will encourage more international businesses to invest in Bahrain and take advantage of the wonderful opportunities my country offers.

Mr Yusuf Mohamed Jameel

Charge d'Affaires ai., Embassy of the Kingdom of Bahrain to the United Kingdom

About the Contributors

A.M. Yateem Brothers are a long established family business in Bahrain, with a diverse range of investments.

Andrew Petty is a general practice Chartered Surveyor. He has some 30 years of international property experience, based in London, Hong Kong and Russia prior to coming to the Middle East. He is currently the Centre Manager for the Yateem Centre in central Manama.

Abu-Ghazaleh Intellectual Property (AGIP) was established, as TMP Agents, in 1972 in Kuwait. Since then it has devoted its efforts to promoting the importance of IP protection throughout the Arab countries.

AGIP can now not only boast being the largest IP firm in the region with 18 offices in the Arab countries and a network of associates that are the equal of any firm in the world, but also the fact that its advice and encouragement to the governments of the region have frequently played a significant role in the introduction of new laws.

Operating from our central headquarters in the Jordanian capital of Amman, AGIP is dedicated to providing excellence in the quality of services it renders, the quality of people it employs and the ethical and professional approach it adopts.

As a member of Talal Abu-Ghazaleh Organization (TAGO), its licensing department has access to a database made up of thousands of clients across the Arab countries and around the world, providing it with the capabilities to find the right partners for each licensing and franchising venture.

To ensure services of the highest quality, AGIP's 21 offices report to its regional office in Amman, Jordan. In addition to monitoring the administrative and technical work of the offices, the Regional Office provides them with a full range of services including quality control, training, technical know-how, consultations, financing and state-of-the-art communication technology through its own servers. The centralized accounting system at the Regional Office enables clients to attend to financial matters easily and effectively through a single contact.

Mazin M Ajawi is the Intellectual Property Manager of Abu-Ghazaleh Intellectual Property-TMP Agents in Bahrain.

AXA Gulf Insurance is a joint venture between AXA and the renowned YBA Kanoo Group, whose history in insurance in Bahrain dates back to 1950.

AXA Gulf offers a full range of insurance solutions for both personal and business needs. Operating in Bahrain, KSA, UAE, Oman and Qatar, AXA Gulf is committed to the GCC in investing in the region and expanding the business, whilst at the same time delivering the highest standards of service.

AXA Brand:

- 52 million clients worldwide
- 120,000 employees worldwide working to deliver the right solutions and top quality service to our customers
- 400,000 shareholders
- €1,315 billion in assets under management (as of December 31, 2006)
- €79 billion in revenues (as of December 31, 2006)

With 22 years experience in the General Insurance Industry, **Stephen Wagstaff** is the Area Manager (Qatar and Bahrain) for AXA Insurance Gulf BSC (c). Stephen joined AXA in January 2007 following 11 years working for Royal & SunAlliance in Saudi Arabia and 10 years for Eagle Star Insurance in Manchester UK, South Africa and Australia.

Ali Al Mansoor is the Head of Public Relations and Marketing for the **Bahrain Stock Exchange**.

Dr. Paul J. Balles has lived and worked in the Middle East for 39 years – first as an English professor (Universities of Kuwait and Bahrain), and for the past nine years as a writer, editor and editorial consultant. He's had more than 400 articles published, focusing on companies, personality profiles, business profiles, women achievers, journalists and the media, the Middle East, American politics, the Internet and the Web, consumer reports, Arabs, diplomats, dining out and travel. He has also edited seven websites. His book, *Under an Arabian Sky*, is awaiting publication.

The **Central Bank of Bahrain** is the successor to the Bahrain Monetary Agency following promulgation of Decree No. 64 of 2006, The Central Bank of Bahrain and Financial Institutions Law. It is responsible for ensuring monetary and financial stability in the Kingdom of Bahrain and for maintaining the internal and external value of the national currency.

It is also the single integrated regulator of Bahrain's financial services industry.

CPI Financial, established in Dubai in 1999, was born to meet the needs of an ever expanding, increasingly sophisticated financial community, offering a comprehensive portfolio of market-leading products and services tailor-made for the banking and financial sector. It is the only dedicated financial publisher in the MENA region.

The company publishes three magazines, publishes books and organizes events for the financial services industry.

John Foster is currently editor of Islamic Business & Finance and deputy editor of Banker Middle East. He also writes for Private Equity & Hedge Funds magazine. He appears regularly on Al Jazeera English and City 7 TV Dubai. Prior to joining CPI Financial, John Foster was one of the Financial Times's features editors in London and prior to this he worked in the City developing investment products.

Hatim S. Zu'bi & Partners was established in 1971 by Mr. Hatim S. Zu'bi, Barrister-at-Law, and specializes in banking, company and commercial law and arbitration.

E. Hugh Stokes of the law office Hatim S. Zu'bi & Partners has practiced law in the Arabian Gulf for over 30 years. He received an MA from Oxford University and is a Solicitor of the Supreme Court of England and Wales.

KPMG Bahrain is the hub of our Middle East practice. With 8 partners and about 300 professional staff we are one of the largest audit and advisory firms in Bahrain providing audit and advisory services to a wide range of clients across a broad section of businesses.

KPMG Bahrain works very closely with offices in Europe, especially with its UK practice and other offices in Africa, the Middle East and South Asia (MESA) region, and draws heavily on its international resources. This approach enables us to combine international experience with detailed local knowledge to help determine the best possible service to our clients.

Jaafar Al Qubaiti is a Partner, Audit & Advisory at KPMG. He is a CPA and member of the American Institute of Certified Public Accountants and has an Executive MBA. Jaafar has a wide experience in audit and advisory services that he has gained in the last 18 years from working in Bahrain, Qatar and the United Kingdom. He has a detailed knowledge, which he has gained from working with a number of major financial and other entities. In addition to external audit services, his experience includes assisting clients on various business, accounting and corporate governance issues. He is the head of audit and head of banking and finance sector for the Bahrain and Qatar practices of KPMG.

Philip McCrum is Director of Quill Analysis and he is a freelance Middle East Analyst covering the entire ME region.

P.D. Business Information Middle East Limited is a prime resource of business information on the markets of the Middle East, with more than 35 years' experience and accumulated knowledge of the region.

The company makes available in-depth knowledge of the local economies and their political environments, banking and finance, commerce, trade and industry to governments, multinational corporations, private businesses and entrepreneurs worldwide.

Philip Dew has nearly 40 years' experience of residence and business in the Middle East. He is an Arabic speaker and has been employed in executive positions by prominent banking institutions and international businesses.

He has managed his own business development consultancy for over 25 years.

He has authored three books on the economies of Saudi Arabia, Bahrain and Jordan and has been Consultant Editor on seven guides on doing business in the UAE, Bahrain, Iran, Qatar, Oman, Cyprus and Jordan. He has also authored a number of books on financial institutions in the Gulf region.

In 2000, the Bahrain Government invited environmental consultants to register with the General Directorate of Environment & Wildlife Protection (GDEWP) (part of the Public Commission for the Protection of Marine Resources, Environment and Wildlife – PCPMREW), formerly known as Environmental Affairs (EA). This invitation was published as 'Ministerial Order No. 3 with respect to the Environment Authority's recognition of consulting firms involved in the field of Environmental Evaluation of Projects and Environmental Studies'. The overall initiative was reflective of the need for specialists to contribute to the production of high quality environmental reports and assessments, associated with development projects, from a base in Bahrain.

Posford Haskoning Environment Gulf (PHE Gulf) is a partnership between Royal Haskoning (RH) (based in the UK and Netherlands) and Ms Halel Abdulrahman (a Bahraini Environmental Specialist), Bahrain. We are therefore the Gulf region office for a company that has over 700 specialists in environmental divisions. The overall number of staff in RH, including planners, architects and consulting engineers from all disciplines is approximately 3,000. Following the government invitation, PHE Gulf is the first environmental consultancy to be approved by GDEWP.

Halel Khalid Yousif Abdulrahman's background is in the field of Environmental Science, Environmental Impact Assessment (EIA), Environmental Auditing and Environmental Management Systems (EMS). Following the completion of her two environmental degrees, she spent a year working in the UK for Posford Duvivier Environment, where she gained practical experience and carried out a number of specialist projects, including contributions to EIAs, site assessments, environmental reviews and appraisals, in addition to the provision of advice on Environmental Management Systems (EMS). She also provided guidance on the achievement of EMAS and ISO 14001 to industrial clients and Posford's own EMS.

Since returning to Bahrain, Halel worked for Midal Cables Ltd. (one of Bahrain's large aluminium firms) as Head of the ISO Department. She was in charge of Midal's EMS, Quality Management System (QMS), Health & Industrial Safety System and Security; and developed procedures for integrating these into one system.

In 2000, Halel took the initiative to establish Posford Haskoning Environment Gulf in conjunction with Posford Haskoning Ltd, UK, part of the Royal Haskoning Group. She is now the working partner/director of Posford Haskoning Environment Gulf.

Ms Abdulrahman plays a central role in EIA and environmental appraisal projects using her individual specialisms, extensive local / regional knowledge and stakeholder contacts. Her experience also covers EMS and environmental auditing.

Trowers & Hamlins is a long established law firm made up of over a 100 partners and 600 personnel in total, with its head office in London; its international practice is particularly closely associated with the Middle East, with offices in Bahrain, Dubai, Abu Dhabi, Oman and Cairo, as well as an associated office in Saudi Arabia. The firm has the largest Middle East presence of any law firm world wide. The firm won the prestigious Law Firm of the Year Award at The Lawyer Awards 2007.

Dominic O'Neil, Resident Managing Partner, acts for a range of international and domestic corporate based clients, financial institutions and public bodies on a variety of commercial, project related and banking matters. Notable deals include representing IDB Infrastructure Fund LP on its acquisition of a US \$150 million equity stake in AES Limited and whilst in London acting for Guardian Assurance plc on the sale of its property portfolio to Scottish Widows for more than £730 million. Dominic is recognized for his regional and transactional experience in Banking/Finance, Corporate and M&A work in the Chambers Global "The Worlds Leading Lawyers" as well as being recommended in the European Legal 500 for work in Commerce and Finance.

Sallie Bowtell joined Trowers & Hamlins from a national Australian law firm where she had worked in the property and environment department. Sallie has acted for a number of public companies in respect of commercial leasing, industrial and residential sales and acquisitions. In Bahrain, Sallie has worked on a number of major developments, including Bahrain Bay, Reef Island and Bahrain World Trade Centre.

Robert Brodrick is a partner in the Private Wealth group specializing in domestic and international tax and estate planning for wealthy individuals, their advisers and trustees. Robert has been involved in the creation and reorganization of structures for a number of high profile Middle Eastern clients.

Robert is a member of the Society of Trust and Estate Practitioners for whom he has lectured on "Trusts and the Middle East" in a number of locations worldwide. He has also presented seminars for the Bahrain Family Business Association and the Bahrain Young Presidents' Organization on "Family Businesses and Trusts".

Neale Downes, Partner, is the Regional Head of Banking and Finance at Trowers & Hamlins. Neale has a broad based finance practice. Particular areas of expertise include asset-backed and asset-based financing (including many securitizations), syndicated lending, Projects/PFI, acquisition finance and other leveraged and structured finance. Having spent some 10 years in the City of London, he moved to Bahrain in March 2003. More recently, he has been increasingly providing advice to a number of Islamic institutions in relation to product development and standardization of documentation and is a member of the firm's Islamic Finance Group.

Abdul-Haq Mohammed, Partner, is the head of the firm's Middle East real estate team. He specializes in all aspects of real estate work, advising developers and investors on major property projects. He is acting on many of the biggest and most prestigious developments taking place in Bahrain, as well as projects in Saudi Arabia and elsewhere. Abdul-Haq is also a member of the firm's Islamic Finance Group and continues to advise on Islamically-financed real estate structures. He has spoken at seminars in London, the Gulf and Egypt.

Elham Ali Hassan and Associates has over 17 years of experience in Bahrain. Elham Ali Hassan has seven associates in the Bahrain office offering advice on a range of matter such as oil and gas, civil and criminal law as well as expert knowledge on a range of matters concerning Bahrain local law and company formation in Bahrain. The firm is well versed with the regulatory and practical requirements required by ministerial authorities concerning matters associated with Bahrain law.

PART ONE

Background to the Market

1.1

The Political Environment

Paul Balles

Introduction

The Kingdom of Bahrain is a constitutional hereditary monarchy, with Manama as its capital. There are five governorates: Asimah (the Capital), Janubiyah (South), Muharraq, Shamaliyah (North) and Wasat (Centre), each of which is administered by an appointed governor.

Bahrain has been ruled by the Al Khalifa family since 1783. In 1861, a treaty of perpetual peace and friendship was signed with Great Britain, a treaty that was renewed in 1971 when Bahrain gained its independence from the United Kingdom. The Kingdom celebrates its National Day on 16 December.

On 14 February 2002, Bahrain adopted a new constitution. The legal system is based on both Islamic law and English common law. The three main branches of government in Bahrain are the executive, legislative and judicial branches. Political parties are prohibited but political societies were legalized by a July 2005 law.

Constitution of the Kingdom of Bahrain 2002

The following excerpts are from an English translation of the Constitution.

The Kingdom of Bahrain is a fully sovereign, independent Islamic Arab State whose population is part of the Arab nation and whose territory is part of the great Arab homeland. Its sovereignty may not be assigned or any of its territory abandoned.

The regime of the Kingdom of Bahrain is that of a hereditary constitutional monarchy, which has been handed down by the late Shaikh Isa Bin Salman Al Khalifa to his eldest son Shaikh Hamad bin Isa Al Khalifa, the King. Thenceforward it will pass to his eldest son, one generation after another, unless the King in his lifetime appoints a son other than his eldest as successor, in accordance with provisions of the Decree on inheritance stated in the following clause:

All provisions governing inheritance are regulated by a special Royal Decree that will have a constitutional character, and which can only be amended under the provisions of Article 120 of the constitution.

The system of government in the Kingdom of Bahrain is democratic, sovereignty being in the hands of the people, the source of all powers. Sovereignty shall be exercised in the manner stated in this constitution.

Citizens, both men and women, are entitled to participate in public affairs and may enjoy political rights, including the right to vote and to stand for elections, in accordance with this constitution and the conditions and principles laid down by law. No citizen can be deprived of the right to vote or to nominate oneself for elections except by law.

Executive branch

All executive authority rests with the Council of Ministers, which is entrusted with overseeing the country's interests, the formation and implementation of general government policy and the supervision of the course of business in the government system.

The Head of State is Shaikh Hamad bin Isa al Khalifa (since 6 March 1999), the King and his Heir Apparent, the Crown Prince, Shaikh Salman bin Hamad Al Khalifa (who is the son of the monarch and was born on 21 October 1969).

The Head of Government is the Prime Minister, Shaikh Khalifa bin Salman al Khalifa (since 1971). There are three Deputy Prime Ministers: Shaikh Ali bin Khalifa bin Salman Al-Khalifa, Shaikh Mohammed bin Mubarak Al Khalifa and Jawad Al-Araidh.

The Prime Minister and his Cabinet, the Council of Ministers, are appointed by the monarch. Presently the Cabinet comprises 25 members.

Legislative branch

Bahrain's bicameral legislature consists of the Consultative Council (40 members appointed by the King) and the Council of Representatives or Chamber of Deputies (40 seats; members directly elected to serve four-year terms). Both houses have equal legislative powers and the right to amend or reject proposed legislation.

The Consultative (Shura) Council

The Consultative Council (Majlis al-Shura) is the name given to the upper house of the National Assembly, the main legislative body of Bahrain. The

Council comprises 40 members appointed directly by the King of Bahrain. The 40 seats of the Consultative Council combined with the 40 elected seats of the Council of Representatives form the National Assembly of Bahrain. All laws (except for 'Royal decrees') have to be passed by both chambers of the Assembly.

Supporters of the system refer to democracies such as the United Kingdom and Canada which operate the same bicameral model, with an appointed upper chamber and an elected lower chamber. This allows technical expertise and minority communities a role within the legislative process: in Bahrain, a Bahraini Christian woman, Alees Samaan, and a Bahraini Jewish man have been appointed. After there was widespread disappointment that no women were elected to the lower house in the 2002 general election, four women were appointed to the Consultative Council. Alees Samaan made history in the Arab world on 18 April 2004, when she became the first woman to chair a session of parliament in the region.

The Council of Representatives

The Council of Representatives (Majlis an-Nuwab), sometimes translated as the 'Chamber of Deputies', is the name given to the lower house of the Bahraini National Assembly, the main legislative body of Bahrain. The body was created by the 2002 Constitution of Bahrain. The Council comprises 40 members elected by universal suffrage.

The 40 seats of the Council of Representatives combined with the 40 royally appointed seats of the Consultative Council form the Bahraini National Assembly. Elections to the Council of Representatives were last held in November–December 2006, with the next election scheduled to be held in 2010.

Since February 2007, the 40 seats on the Council have been held by the following political societies: al Wifaq (Shia – 17); al Asala (Sunni Salafi – 8); al Minbar (Sunni Muslim Brotherhood – 7); al Mustaqbal (Moderate Sunni pro-government – 4); Unassociated Independents (all Sunni – 3) and an Independent affiliated with al Wifaq (Sunni oppositionist – 1).

Judiciary

Legal review

A large part of the laws of Bahrain are based on published statutes, which are derived from Shari'a religious law. The Contract Law and Civil Wrongs Ordinance are based on principles of English common law, which were originally adopted during the British protectorate period. Much recent legislation is based upon and follows a civil-law format, much in the style of Egypt and France.

General

The judiciary is made up of two branches: the Shari'a Law Courts, which have jurisdiction over family matters affecting Muslims only, and the Civil Law Courts, with jurisdiction over civil, commercial and criminal matters, as well as family matters relating to non-Muslims.

The Shari'a Law Courts are made up of two tiers: the Senior Shari'a Court and the High Shari'a Court of Appeal, which rule on all matters related to the personal status of Bahraini and non-Bahraini Muslims. This includes all matters relating to inheritance, gifts, wills and charitable donations (waqf). An independent body, the Constitutional Court, is empowered to review the constitutionality of all laws.

Bahrain's Civil and Commercial Procedures Law of 1971 provides the framework for the jurisdiction of the civil and commercial courts. Generally, the civil courts are composed of:

1. the Junior Court;
2. the High Court;
3. the High Court of Appeal;
4. the Court of Execution; and
5. the Summary Actions Court.

The Junior Court

The Junior Court has jurisdiction to hear both civil and commercial cases of claims involving small sums, and cases involving certain real property rights. Junior Court cases may be appealed to the High Court.

The High Court

The High Court has jurisdiction to hear all civil and commercial cases not falling within the jurisdiction of the Junior Court. The High Court is also authorized to hear cases concerning the personal status of non-Muslims and cases that are placed under its jurisdiction by law. The High Court also maintains jurisdiction over non-Bahraini citizens, including companies that are resident or domiciled in Bahrain except in cases involving real property situated outside Bahrain. The High Court has jurisdiction to hear appeals from the Junior Court and the Court of Execution. The High Court has exclusive jurisdiction over appeals of judgements from the Summary Actions Court. Judicial precedent followed by the High Court is set by decisions of the High Court of Appeal and the High Court of Justice sitting as a court of appeal.

The High Court of Appeal

The High Court of Appeal sits as a court of appeal regarding all appeals made from the High Court.

The Execution Court

The Execution Court has jurisdiction to execute all final judgements made by the Junior Court, the High Court and the High Court of Appeal.

The Summary Action Court

The Summary Action Court hears claims that may be adversely affected by the lapse of time. Hearings are usually set to take place not less than 24 hours after the filing of an application for a summary trial, although, in cases of extreme urgency, this period can be reduced.

Bahrain regionally and internationally

Bahrain's political reform has been watched with great interest both regionally and internationally. In the event, the Kingdom has fared well under international scrutiny and has set the standard for political reform in the region.

In 1981, Bahrain became a founding member of the Gulf Cooperation Council, or the GCC, as it is known within the region. Other members include the Kingdom of Saudi Arabia, Kuwait, the UAE (United Arab Emirates), Oman and Qatar. The GCC has provided the Kingdom of Bahrain and the rest of the member states with a new platform for a unique regional mentality of cooperation regarding the exchange of information, research, political and economic strategic thinking and the flow of trade. All efforts in the GCC have assisted in the development of common regional laws and practices.

The political implication of the GCC and its evolution into a partnership held together by formal agreements resulted in Bahrain receiving crucial assistance and backing during its dispute with Qatar over the Hawar Islands in the 1980s and 1990s. Furthermore, Bahrain plays a lead role politically as the first democracy in the Gulf and as such, is looked upon as a model for the democratization of its neighbours. Bahrain is also a member of the Arab League.

On an international front, the Kingdom of Bahrain has maintained strong relationships with the countries of the EU (European Union) and the United States. It is the host of the US Fifth Fleet and has been a major US non-NATO ally since 2001. Bahrain is also the signatory of 30 bilateral agreements on trade and investment, including a free trade agreement with the United States, and is a founding member of the WTO (World Trade Organization).

The Kingdom of Bahrain has evolved in the last few years into an open political system formalizing its respect for civil liberties. With its recent political reforms, Bahrain has ensured a system whereby civil society and government are partners in its future development.

1.2

Economic Background

Philip McCrum

Bahrain was the first of the Arab Gulf states to discover and exploit its natural oil resources in 1932. It was propitious timing; the pearl industry, on which the economy had depended for centuries, was in terminal decline owing to Japan's development of cultured pearls. However, Bahrain's reserves of oil proved to be much smaller than those of its neighbours and ever since the island's rulers have predicated Bahrain's economic development on the need to diversify its economy in order to build sustainable sources of alternative revenue.

Manufacturing

Its efforts have had some success, the most notable of which is the country's aluminium smelter, operated by Aluminium Bahrain (Alba). It commenced production in 1971 and in 2005, following the opening of a fifth potline, became the largest aluminium smelter in the world, with its capacity rising to 830,000 tons per year. In 2006, aluminium exports were worth around \$1.45 billion, making up some 13 per cent of total exports and constituting over a third of all manufacturing output.

Bahrain also produces petrochemicals and iron and steel. Ship repair and related light engineering works, established to service the Gulf's oil industry, help buoy the manufacturing sector. Efforts are currently underway to further develop the country's manufacturing capacity, with the construction of the 650-hectare Hidd Industrial Zone. The \$32 million contract for one of the zone's key components—the Industrial Oasis—was awarded in January 2008, with completion due in 2011. The primary aim of the Industrial Oasis is to drive further economic diversification. It is expected to attract up to \$200 million in foreign investment and generate large numbers of much-needed jobs.

Financial services

Bahrain also had success in establishing itself as the regional hub for financial services after international banks deserted Beirut at the outset of

Lebanon's civil war in the 1970s. It is the country's largest sector, constituting over 25 per cent of GDP in 2006. The industry has been dominated by the so-called "Off-shore Banking Units" (OBUs), which use Bahrain as a base, and until 2006, were only permitted to conduct their business offshore. Almost 90 per cent of their business still remains offshore, with their total assets amounting to more than \$150 billion—some eight times larger than Bahrain's GDP. There are 86 OBUs operating in Bahrain, out of a total of just under 400 financial institutions registered in the Kingdom.

Despite this apparent strength, the sector is under threat, particularly from a highly competitive Dubai and, more latterly, Qatar. Also, greater liberalization of the banking sector in neighbouring Saudi Arabia will have a noticeable impact on Bahrain. The island has built up a significant Saudi customer base over the years, owing to the historical paucity of financial services in the kingdom. With the recent development of Saudi's banking industry, it is likely that many customers will repatriate their cash.

Aware of this vulnerability, Bahrain has looked to innovate within the industry and has established itself as the regional centre for Islamic banking. As yet nascent, Islamic banking is viewed as having great potential and the authorities are keen to build the sub-sector as quickly as possible, before Dubai and Qatar steal a march on them. They are also looking to establish Bahrain as a regional hub for the insurance industry. In support of these plans, the government has built the prestigious Bahrain Financial Harbour (BFH), a gleaming commercial and residential complex located on reclaimed land close to the heart of Manama. The BFH hopes to persuade all the major financial services organizations to relocate their offices there, but since it offers no incentive other than prestige, the success of the scheme is yet to be assured.

Oil

Bahrain's limited onshore reserves are located at Awali and yield just 35,000 barrels per day (b/d). The National Oil and Gas Authority (NOGA), which assumed control of the oil industry after the dissolution of the Ministry of Oil in 2005, does not release official reserve figures, although the International Energy Agency estimates them at around 125 million barrels. These are paltry compared with neighbouring Saudi Arabia's reserves of 262 billion barrels. Production at Awali has been declining since the 1970s, when it reached a peak of around 75,000b/d, although the decline has been slowed in recent years as new technology has been introduced. The government is in the process of upgrading the Awali facility, a process which it believes could potentially double output.

Bahrain receives significantly more oil revenue from its half-share in the offshore Abu Saafa oilfield, which, although technically in Saudi Arabia, borders Bahrain's maritime boundary. The agreement under which Bahrain receives income from what is, in effect, Saudi oil, has never been made fully

clear, but the original agreement, drawn up in 1972, provided for an equal division of revenue (net of production costs). However, in a subsequent agreement signed in the mid-1990s, Saudi Arabia ceded all of the revenue from the field to Bahrain. This deal changed again in 2004, when output from the field was doubled from around 150,000b/d to 300,000b/d. Since then Saudi Arabia has taken its originally agreed equal share, although this has not left Bahrain out of pocket, since it still receives all the revenue from the sale of 150,000b/d—the same amount as prior to the expansion of the field. In 2006, the government's total oil revenue amounted to around \$3.8 billion, 80 per cent of which stemmed from income from Abu Saafa.

Bahrain exports its domestic crude as refined product, which it processes in the state-owned refinery at Sitra, run by Bahrain Petroleum Company (Bapco). It is the oldest such facility in the Gulf and is currently undergoing an upgrade to make it more efficient and more environmentally friendly. However, only 15 per cent of its refined exports come from Awali crude; Bapco buys additional crude oil from Saudi Arabia at what is believed to be a below-market rate. Bahrain's export earnings from its refined products were around \$5.8 billion in 2006, making up more than 60 per cent of oil export receipts.

Bahrain's oil revenues show a very clear picture. Since they constitute almost 80 per cent of total government revenue and a similar percentage of total export revenue, they demonstrate that Bahrain's attempts at diversification have actually had little impact on the structure of the economy thus far. This is disconcerting; Bahrain is effectively still almost wholly reliant on oil, a resource of which it has very little of its own, and for which it is dependent upon Saudi Arabia to supply.

Public sector

Added to this concern, is the fact that the public sector is very much a central component of growth in the economy. Although government consumption, at around 18 per cent of GDP, represents a lower proportion of the economy than elsewhere in the Gulf (owing to its limited oil reserves), the public sector employs almost 70 per cent of the indigenous labour force. Consequently, the government also has a noticeable impact on private consumption. But the availability of these funds is ultimately subject to volatile oil revenues. This exposure to the vagaries of the global oil market entails wide fluctuations in the fiscal account; throughout the 1990s, Bahrain ran a fiscal deficit, although with the rising price of oil since then, it has maintained a surplus—albeit small—averaging around 1.5 per cent of GDP in the five years to end-2006.

It is difficult to see how the government will be able to stabilize the fiscal account without introducing taxes, but this is a politically sensitive issue. In July 2007, the government introduced what was, in effect, the country's first ever income tax, by raising a 1 per cent levy on salaries, to fund an

unemployment benefit scheme. Even at such a low rate, the measure was unpopular, although in reality, many companies, particularly state-owned firms, chose to absorb the cost, rather than pass it on to employees.

Another area over which the government has little control, is monetary policy. Like most of its fellow GCC (Gulf Cooperation Council) members, the Bahraini dinar (BHD) has been pegged to the US dollar at the rate of BHD 0.376:\$1 since 1980. This effectively subordinates monetary policy to the US Federal Reserve, since local interest rates must closely track those in the US in order to prevent the so-called “carry trade”, where currency speculators borrow a currency at a cheaper rate, using it to buy debt in a currency with a higher yield. This reduces the efficacy of interest rates as a means to control inflation, a highly topical concern given rising consumer prices across the Gulf.

In Bahrain, according to the International Monetary Fund (IMF), annual average inflation has risen from 1.7 per cent in 2003, to 3.5 per cent in 2007. This has raised heated debate over the dinar-dollar peg, with speculation that Bahrain will drop the peg to gain tighter control over monetary policy. But owing to the close alignment with, and reliance on, the Saudi economy, it is unlikely that Bahrain would make such a unilateral move, only do so if Saudi made the move first. In any case, dropping the peg is not a solution by itself. The current high levels of inflation in Bahrain are more to do with money supply growth and supply-side bottlenecks, rather than exchange rate-related factors. In particular, fiscal laxity is one of the primary causes of money supply growth; government expenditure has risen by an annual average of around 16 per cent over the past three years. In the absence of monetary tools to control inflation, the government also employs fiscal-related measures, such as subsidies, to control prices. But such short-term, non-market, measures, which are designed to tackle inflation directly, will inevitably fuel inflation in the medium to long term, since they also do nothing to tackle the underlying cause of rising prices: money supply growth. These weaknesses highlight the need for the government to better calibrate the economy, primarily by reducing its own role and empowering that of the private sector.

Private sector

To be fair, the government is taking clear steps in that direction. The privatization of state enterprises was officially made government policy in 2002, and the programme has moved forward since then, with divestments mainly centred on the tourism, utilities, transport and communications sectors. One of the largest moves to date has been the privatization of the operatorship of Bahrain’s two main ports—Mina Salman and Khalifa bin Salman Port. A Danish company, APM Terminal, won the tender in 2006. The port sale is a good example of the government’s dual privatization strategy. By linking divestments to key infrastructure projects, the

government not only gains from the sale, but also passes on the operating and development costs.

Early in 2008, it appeared as if the government was prepared to push the privatization programme forward more swiftly. It appointed a former investment banker as chief executive of the state holding company, Bahrain Mumtalakat Holding Company. Mumtalakat was established as recently as June 2006 to manage the government's non-oil investments, and the new CEO's task is to reduce the government's holdings in the 33 companies in which Mumtalakat retains stakes, to less than 50 per cent. It is likely to relinquish its stake in some companies altogether with indications that Batelco, Bahrain's leading telecommunications provider will be one of the first to be sold.

Otherwise, Bahrain has an open attitude to foreign capital. Indeed, attracting foreign investment is one of the central planks of the government's economic policy, as drawn up and implemented by the Economic Development Board (EDB). Since its inception in 2001, the EDB has shown an enlightened, if conservative, approach to policy. Headed by the crown prince, its particular remit is to facilitate private-sector investment, in order to achieve its ultimate goal of changing the government's role "from the operator of the economy to a focus on policy and regulation". It is looking to attract between \$600 million and \$800 million in foreign direct investment a year in six key areas: financial services, tourism, information technology, healthcare, education and training, and downstream aluminium manufacturing. It hopes to be aided in this by the signing of a free-trade agreement (FTA) in 2006 with the US. A similar agreement with the European Union (and which incorporates all the other GCC member states) has been under negotiation for 14 years, although will reportedly be concluded in 2008.

Labour and unemployment

Apart from Bahrain's structural weaknesses, the country's main economic blight is that of unemployment. With up to 16 per cent of the labour force without a job, most of whom come from the marginalized—but majority—Shia community, unemployment poses a serious socio-economic dilemma for the government. On advice from the US management consultancy, McKinsey, it has shifted its policy away from "Bahrainization" (the unpopular system whereby firms were given minimum quotas for the number of nationals they must employ), to one where fees for each foreign worker will be levied. From July 2008, employers will be obliged to buy a permit, at a cost of BHD 200 for two years, for each expatriate worker on their companies' books. There will also be an additional monthly levy of BHD 10. The funds will be used for training schemes for under-qualified Bahrainis and as a source of business grants for local companies. With around 80 per cent of private sector jobs held by expatriates, the scheme should generate

significant revenues, but has naturally attracted criticism owing to the extra costs it will place on employers.

Table 1. Selected indicators

		2003	2004	2005	2006	2007
Real GDP	% change	7.2	5.6	7.9	6.5	6.6
M2	% change	6.4	4.1	22	14.9	34
Inflation	% change	1.7	2.3	2.6	2.2	3.5
Fiscal balance	% of GDP	-2.0	0.3	3.4	2.7	1.6
Current account balance	% of GDP	0.2	0.5	1.5	2.1	3.1

Source: IMF

1.3

The Business Environment

Andrew Petty, A.M. Yateem Brothers

Overview

Bahrain. Small rock. Gateway to the Gulf. Magnet for corporate behemoths and small entrepreneurs.

Understanding the commercial environment of Bahrain requires a certain understanding of the history and influences that have created that environment. With a history of 5,000 years as a trading location, Bahrain stands apart from its neighbours. The most common epithet used is 'friendly'. This is not to be confused with simple but rather considered as a reflection of a nation that has had to deal with strangers coming to its shores for so long that it has become a natural extension of their lives. Most visitors to Bahrain will be impressed by a tolerance that has either been long forgotten or never known on their home shores.

This is not to say that the commercial environment is easy. The normal frustrations of dealing in a different culture always apply and often catch one out the moment one lets one's guard down and believes that things are running smoothly.

Bahrain is not a large country. With an indigenous population of just over 1 million, split between the indigenous and expatriate population, the talent pool is not deep. For most of the population, the preferred career pattern is with the government, with perceived high salaries, tenure for life, a substantial pension and a stress-free working pattern. The government sector is closely followed by the government-invested major corporates, although recent retrenchments and major cutbacks have somewhat dulled the lustre. In some sectors, there is an expectation that government should supply jobs for all Bahrainis.

The highest trained Bahrainis tend to be from the richer families who educate their scions overseas and then bring them back to further develop the family interests and businesses. A fundamental failing of this system being that the education rarely involves training and practical exposure to other business practices, thus often replicating the established practices of the family groups without achieving the benefits of experience in other market places.

One word that is learnt early is '*wasta*', or influence. Bahrain is a small community with extensive families. A natural consequence of this is the pressure to help family and friends – the larger the circle and the higher placed, the greater the circle of influence. *Wasta* can frequently speed-up or overcome processes that appear as insurmountable stumbling blocks. The downside being the inevitable temptation to abuse power and use *wasta* to circumvent regulations. A cautionary note – use of *wasta* always leaves a price to be paid, usually in returning the favour in a larger manner.

Years of British colonial influence combined with low subcontinent wage levels have left an Indian administrative infrastructure through all levels. This often influences management decisions with a focus upon minor expenditure rather than major policy. The benefit to business is a relatively low overhead for administrative staff, when compared with the West.

Language

Bahrain is an Arab nation, with Arabic as its mother tongue. For the English speaker, the commercial environment is substantially simplified by an almost universal knowledge of that language. The inherent trip is that the government administration (and thus language) is officially Arabic.

Despite the official and native language being Arabic, the inherent courtesy of the people will often result in entire meetings and presentations being conducted in English for the benefit of a single native-English speaker. This is not to say that it is seen as anything but a courtesy to do so, and certainly not obligatory.

Government

The administration is also often felt as unnecessarily bureaucratic. For many, including most of the local large trading houses, the solution is to employ an independent public relations officer. These people have the knowledge and the patience to flounder through the government bureaucracy on your behalf, and generally their fees are not exorbitant (after trying to do it oneself, the fees will be positively cheap).

Meetings

A frequent frustration for the newcomer to Bahrain is the concept of the meeting. Appointments are not necessarily made, often just walking into a person's office is surprisingly effective. It is also a courtesy for friends and families to drop in during the course of the morning – although commercially inefficient it is highly socially effective. You are as likely to spend half a day

waiting for somebody to see you if you have an appointment, as if you just walk in. Be prompt for appointments, but do not expect other people to be.

Legal

Contracts are important. Until there is a signature, do not believe that there is a contract. Once there is a signature, believe that you have a gentleman's agreement, because legal enforcement is very difficult. The court system is dominated by Egyptian lawyers applying a Napoleonic system to the inherited British framework. Whilst results may be achieved, time is definitely not of the essence and the lack of transparency compounds the problem.

The system has been improved with the introduction of the 'Summary Action Court', whereby certain legal procedures may be expedited, eg, it is now possible to retrieve premises from non-paying tenants within 3–6 months, although rent is not seen as urgent. [*This is not a recommended way for the entrepreneur to reduce overheads, debtors may have travel bans put on them preventing them leaving Bahrain and/or may face summary arrest.*] The proposed introduction of a commercial court is hoped to improve the situation, but in the interim the continuing preponderance of criminal and family law judges is not encouraging for the commercial litigant.

Business hours

Business hours vary widely within the country depending upon the sector. Traditionally manufacturing and government run from 7.00 am to 2.00 pm, with commerce running from 10.00 am to 1.00 pm and again 4.00–8.00 pm on a 5½-day week, ie Saturday–Thursday. The major industries operate 24-hours.

The government has introduced a five-day week, ie Sunday–Thursday, and this has been widely adopted within the private sector. Private businesses tend to run from 8.30 am to 6.30 pm, with a three-hour lunch break from 12.30 to 3.30 pm, although the Western influence, ie 9.00 am–5.30 pm with one hour for lunch, is gaining in popularity.

Women in business

Bahrain is considered to be the leading Gulf country in the empowerment of women. It is not uncommon for women to be dynamic leaders in many facets of the commercial and government environment. However, it must be remembered that this is still a very male-dominated Islamic society and there is still a novelty factor in having local women involved in the commercial sector. As a generalization, the more senior the personnel, the

greater the likelihood of Western influence in attitudes. The wearing of the *hijab* and *abaya* is common amongst secretarial staff, but not universal in application. Some sectors of Islam consider unrelated contact between the sexes objectionable, so do not be surprised at a reluctance to shake hands.

Dress

The dress code is wide-ranging. Gulf nationals will normally wear either traditional Arab attire or Western dress. Western dress for men is normally a lightweight suit and tie but may reduce to slacks and an open-necked shirt in the summer, or any variant in between. Women are expected to dress 'decently', without unnecessary display of flesh or emphasis of sexuality. As one remark by a tolerant observer put it 'There is a difference between what you would expect to find on the beach and what you expect to see in the *sug*'.

Families

The commercial environment within Bahrain is dominated by a number of trading families. Being a small country with a limited number of large commercial enterprises, there are substantial inter-family relationships. This will often result in apparently open-market bidding actually being used to test market pricing levels, with the 'successful' bidder actually being an aunt, uncle or cousin. There is little chance of secrets being kept or business remaining confidential.

There is also an element of 'me too' within the market, in that it is perceived that if one person (or family) can make a profit within any identified sector, 'of course' everybody else is missing out and they can also succeed in the same sector. Word of mouth is often the best and worst reference when searching for assistance, as it removes a certain prejudice from committing a bad opinion to paper but also encourages recommendation of friends or family members.

Customs

Being a small island, there is little indigenous production and the bulk of items are imported. Traditionally a focus of resentment due to interminable delays, Customs have been substantially improved. However, for any import, do expect delays as there is a requirement for inspection of all imports for both security and revenue reasons. Again, the use of local agents normally speeds up the process and reduces the headache to the foreign businessperson.

Imports are by land (over the causeway through Saudi Arabia), sea and air, with the well-established port of Mina Salman (which also serves as an

entrepot for Saudi Arabia) being substantially upgraded by the development of the new Shaikh Khalifa bin Salman Port at Hidd.

Property

The traditional business area of Bahrain is Manama. This effectively forms the north-eastern corner of the island. Originally focused on the Suq (or market), progressive reclamation of the shoreline has resulted in a number of newer sub-locations which attract businesses due to the availability of modern facilities.

The Suq itself is mainly underdeveloped, with older tenement-style properties. There are a number of more modern commercial buildings interspersed into this melange, the main obstacle to wholesale redevelopment being site acquisition. The first air-conditioned commercial complex in Bahrain, the Yateem Centre, was only developed in the early 1980s.

To the north of the Suq, there have been three phases of reclamation, which have allowed a wave of developments in the 1980s, 1990s and at the current time. The most important feature of these is the Bahrain Financial Harbour, providing modern Grade A offices into the market, with associated residential, retail, hotels and cultural centre on the drawing board. The completion of the World Trade Centre in 2008 will also provide internationally iconic world class offices. Reclamations to the east and west are providing more land for the expansion of the central business district and are acting as magnets for the development of premier headquarters buildings for a number of financial institutions.

Less prominently, but of significance, is the Seef district to the west. This is currently the fastest growing commercial development area in the country and is probably best known for its two major shopping malls – Seef and Al A’ali – which will see major competition on completion of the nearby City Centre Mall in 2008. Bahrain National Holdings, HSBC and Citibank are examples of significant institutions that have located their main office buildings here. The recent development of a number of commercial and residential buildings has encouraged the relocation of numbers of companies into the area.

The most focused of the commercial districts is the Diplomatic Area to the east. Developed mainly in the late 1980–1990s, the area features numerous government ministries, financial houses and the law courts. Unfortunately, lack of planning for vehicles has resulted in a woeful under-provision for parking. This results in major congestion throughout the area in the mornings during government office hours, although the afternoons become significantly easier. This has not reduced the popularity of the area as a commercial district, due to the proximity of so many government institutions and competitive rents arising from the older building stock.

In the past, there have been many businesses operating from private villas in residential areas. This practice is slowly dying out due to recent

emphasis on the registered address of a company being required to be within a commercial building.

The industrial base of the country (outside the oil and petro-chemical sectors) has been low, with the major manufacturing industries predominantly influenced by Alba, one of the largest aluminium smelters in the world. This is changing with the establishment of the Bahrain Investment Wharf and Enterprise Zones at Hidd, which are encouraging new development and expansion of existing industries. The Free Trade Agreement with the United States is an added incentive to regional manufacturers to look at locating within the country. It is an anomaly of the country that local labour is easier to achieve in manufacturing than some other sectors, due to the reluctance of the blue-collar worker to be 'seen' in any form of purported menial (service industry) work.

Property purchase by non-Bahrainis has recently been permitted in specified locations. This has resulted in a wave of new, mainly medium- to high-rise development, predominantly in the residential sector.

Labour

Latest official figures put the population of Bahrain at approximately 1 million, more than half of whom are expatriates, which naturally skews the labour market. Geographically, the majority of foreigners in the Gulf are from the Indian subcontinent. The majority of these workers are labourers and housemaids, although a large proportion of the administration of private businesses is dominated by Indian accountants and managers.

There has been growing pressure for 'Bahrainization', with requirements for businesses to have a percentage of Bahrainis on the staff and increasing costs being implemented for the employment of expatriate workers. When one combines this internal pressure on costs with the external factor of India's rapidly growing economy and increasing salaries 'at home', one may expect a sea change over the next five years in the nature of employment and administration within the region.

Officially, all foreigners are employed directly by a local sponsor, who arranges their work permits and two-year residence permits and is responsible for their terms of employment within the country. This has given rise to a flourishing trade in 'free visa' workers, who will often pay their sponsor relatively large sums to arrange for them to enter the country and then permit them to seek any form of employment that they can. Another sector of this category is those workers who have remained when they should have returned to their own countries. The government is continually seeking to repress the free visa phenomenon by both employer and employee through education, inspections, fines, imprisonment and deportation, whilst also seeking to enable freer movement of foreign nationals between employers.

Current trends and crystal balls

In the last quarter of 2007, an interesting dichotomy was apparent in the economy of Bahrain. Whilst there is clear and growing capital investment in the country (most particularly apparent in the property market), there appears to be a declining prosperity for the individual citizen. The government's push to transition the economy into self-reliant independence may be expected to have its pain barrier, as was seen in Singapore. However, it is to be expected that a motivated, educated, indigenous work force will continue to reap benefits for the country long into the future.

Within the local economy, short-term stresses are to be expected as inflationary pressure increases, historically cheap expatriate labour is made more expensive and the protected local market is opened up to greater competition.

The labour market should see great transition. Increased freedom of movement of labour and higher labour costs (direct and indirect) will definitely have their impact on business. Whether the increasing effectiveness of the Indian economy will result in a short- or medium-term change of the foreign employees necessary to the continued well-being of the local economy is uncertain.

In the property market, the current building boom, combined with permission for non-Bahrainis to invest in property (in specified locations), should ensure continued profitability for the construction sector for the next 3–5 years.

As part of the regional economy, Bahrain may be expected to gain through its diversification in manufacturing and industry, as well as its educational advantages and focus on internationally recognized and acceptable standards, particularly in the finance industry. In the short-term, Bahrain's ambience, lifestyle and price competitiveness, compared to the other Gulf States, are expected to draw investment from the Gulf, both in direct capital investment and through international office relocations to the Kingdom. The old axiom of 'money attracts money' may be expected to be realized with the increasing presence of international finance houses, both traditional and Shari'a-compliant – Bahrain now being recognized as an international leader for the latter.

1.4

International Trade

Ministry of Industry and Commerce, Bahrain

Importance of international trade

Bahrain has been at the centre of Middle East trade for centuries, and whilst ancient trade in spices and pearls has given way to other products and services, trade remains the cornerstone of the Bahrain economy, an economy which is highly dependent on foreign markets for its requirements of manufactured goods as well as a destination for its domestic merchandise and services producers.

The importance of trade in terms of the Bahrain economy is manifested in the ratio of exports and imports of goods and services as a percentage of GDP, which in the period 2002–2005 averaged 129 per cent.

Bahrain is an archipelago nation, and this is the key to understanding why trade is so important to the economy and to an appreciation of the fundamental difference between Bahrain and other countries in the region. Whilst mere geography on its own is not the key, it is nevertheless the root of Bahrain's outward bound mercantile spirit, the willingness to take a calculated risk and the adventurous and at the same time the welcoming nature of the Bahraini people.

Underpinned by the discovery of oil in the 1930s, the Bahrain Government, under its wise leadership, has followed a policy of progressive diversification and liberalization of the economy, which has moved from an agrarian and pearl-trading base, to become the region's financial services and business hub, and one of the freest economies in the world.

Bahrain is a services-based economy, and currently a net importer of manufactured products, but with a growing industrial capability, the expansion of which is being actively pursued as a policy objective by the government. The government is also a strong supporter of free markets and an open rules-based global trading system, advocating economic openness as a strong development trigger, to encourage and facilitate export of its products and services, as well as to strengthen domestic capacity and competitiveness by encouraging inward investment.

Having maintained its position as the financial capital of the Middle East, Bahrain is focused on becoming a key regional trading hub and retail trade centre. Being an island nation, regional trade is particularly important to Bahrain, and this was enhanced with the development of the causeway

connections to Saudi Arabia, and is now planned to extend to Qatar, with a new causeway and possible rail connection, which will support its trade facilitation and supply chain logistics potential, not only with its GCC (Gulf Cooperation Council) partners but also with the world at large.

Import trade enjoys duty free entry for most basic raw materials, industrial inputs and basic foodstuffs. Of the remaining goods which are dutiable, over 90 per cent of these incur very low customs duties of between 0 and 5 per cent.

Bahrain's trading environment is stable and transparent. There are no import restrictions except for patrimonial heritage, environmental, health or security considerations.

There have been significant changes in Bahrain since 2000 that have shaped the political, economic and trade landscape and which have had an overall positive impact on Bahrain's trade policy and the perception of Bahrain to other WTO (World Trade Organization) members.

In particular, the transition into a constitutional monarchy, with the attendant political and institutional reforms, focus on the private sector as the engine of growth, labour market reforms, the strong performance of the commercial, financial and industrial sectors on the back of legislative and supervisory changes, as well as the influx of FDI in support of the large infrastructure projects, have been the main contributors to robust economic growth and the Kingdom's strong trade performance. Also Bahrain's customer-centric policies, in particular, the impact of the Bahrain Investors Centre, have had a significant impact in improving the trade regime.

All of the above-mentioned elements, the Kingdom's liberal trade policies, its active engagement in the WTO at various levels, and in particular, in the Doha Development Agenda, have enhanced the reputation of Bahrain as a legitimate trading nation.

Merchandise trade structure imports (including oil)

Total imports increased by approximately 79 per cent over the period 2002–2006, to \$8.957 billion (2002 – \$5.011 billion), the largest single item on the import bill being crude oil, which in 2006 amounted to \$4.902 billion (54.7 per cent). Manufactured products (excluding food processing) amounted to \$3.383 billion, the largest single-import group being fabricated metal products, machinery and equipment at \$1.769 billion (transport equipment representing \$694.6 million).

The single largest source of imports in terms of value in 2006 was Japan at 5.5 per cent of total imports, followed by Saudi Arabia (5.3 per cent), Australia (3.7 per cent), China (3.7 per cent), the United States (3.2 per cent), Germany (2.9 per cent), the United Arab Emirates (2.5 per cent) and the United Kingdom (2.1 per cent).

On a regional basis, Asia continued to be the most important trading partner in terms of Bahrain's imports, representing 18.5 per cent of the total value (2002 – 24.6 per cent), followed by Europe at 12 per cent (2002 – 22.7 per cent) and the Middle East 9.3 per cent (2002 – 11.4 per cent).

Table 1. Kingdom of Bahrain imports (excluding oil imports), January-December 2006*

Rank	Country name	BHD (millions)	US\$ (millions)	% of total
1	Japan	251.0	664	10.9
2	Australia	229.0	606	9.9
3	Saudi Arabia	194.3	514	8.4
4	China	173.7	460	7.5
5	Germany	167.0	442	7.2
6	US	161.3	427	7.0
7	UK	121.0	320	5.2
8	UAE	119.4	316	5.2
9	Italy	94.0	249	4.1
10	India	70.3	186	3.0
	Remaining 139 countries	725.8	1920	31.5
	TOTAL (in all 149 countries)	2,307	6,102	100.0

*Provisional

Note: US\$ = 0.378 Bahraini dinar (BHD)

Source: Central Informatics Organization

Exports (including oil)

Bahrain's exports (including re-exports) in 2006 at \$11.662 billion were more than double the 2002 figure of \$5.794 billion, buoyed by the surge in oil prices, fuel contributed 79.1 per cent of total exports (2002 – 68.3 per cent).

The export of aluminium alloys (non-ferrous metals) amounted to 12.1 per cent of the 2006 total (2002 – 13.3 per cent), and manufactured items exports totalled 6.8 per cent (2002 – 13.5 per cent). Agriculture contributed around 0.5 per cent to exports (2002 – 1.0 per cent).

In terms of actual value, the share of non-oil exports has increased over the past five years, but the percentage contribution to overall exports trade has reduced due to stronger oil prices.

The world market for Bahrain's exports is quite diverse but with a strong regional bias. The share of the Middle East in Bahrain's exports was 8.8 per cent in 2006 (2002 – 10.6 per cent), Asia made up 7 per cent (2002 – 8.8 per cent), Europe 2.3 per cent (2002 – 2.6 per cent) and the United States 1.9 per cent (2002 – 7.9 per cent).

Table 2. Kingdom of Bahrain exports (excluding oil exports), January-December 2006*

Rank	Country name	BHD (millions)	US\$ (millions)	% of total
1	Saudi Arabia	226.2	599	21.8
2	US	94.2	249	9.1
3	Singapore	74.2	196	7.2
4	India	67.0	177	6.5
5	UAE	59.0	156	5.7
6	Qatar	44.4	117	4.3
7	Thailand	43.2	114	4.2
8	Japan	41.2	109	4.0
9	South Korea	38.6	102	3.7
10	Netherlands	34.1	90	3.3
	Remaining 88 countries	313.7	830	30.3
	TOTAL (in all 98 countries)	1,036	2,741	100.0

*Provisional

Note: US\$ = 0.378 Bahraini dinar (BHD)

Source: Central Informatics Organization

Doing business with Bahrain

In general

For any business considering doing trade with Bahrain, it is important to understand the trading environment, the laws and regulations, and the facilities available in the country which promote and encourage business. A later section of this article sets out the general trading policies and environment, including Bahrain's membership of international trade organizations, but here we will provide an overview of those elements which directly affect doing business in Bahrain.

The Bahrain economy is one of the freest in the world, as measured by the Heritage Foundation Index of Economic Freedom, and this claim is further supported by the *Financial Times* magazine designation of Bahrain as the City of the Future. In practical terms, this translates into a transparent and well-regulated trade environment.

Foreign investment is welcomed in Bahrain for the potential employment opportunities, trade expansion and cross-fertilization possibilities which this presents. Practically all sectors are open to direct foreign investment through a 100 per cent foreign-owned Bahrain incorporated company, or branch of a foreign company. A negative list is published which sets out the small number of activities which are not currently permitted for foreign investors, and the BIC (Bahrain Investors Centre), an initiative of the MOIC (Ministry of Industry and Commerce), facilitates the incorporation process.

The BIC is a true one-stop shop for foreign investors and comprises a single location which houses all government departments involved in the

commercial registration process, and which communicates through single bespoke software to provide a common application window. All government departments involved are committed to their declared public targets, which in most cases is a maximum of five days, and with many applications being completed within one day.

Principle trade-related laws

Bahrain is a member of the GCC and as such is committed to the harmonization of its trade-related laws with other members. A number of GCC resolutions have been adopted in this regard covering national treatment amongst GCC nationals, customs-related and other issues.

Bahrain has amended many of its laws to be compatible with the WTO and has been building institutional capacity in order to ensure effective monitoring. In general, investment in Bahrain is regulated by the Commercial Companies Law of 2001 (a new Commercial Companies Law is currently in the legislative process), the Commercial Registration Law and the Commercial Law. For a list of all trade-related legislation please visit www.legalaffairs.gov.bh.

Import and export procedures

Bahrain has bound all its tariff lines (with the exception of alcohol and tobacco at 35 per cent), and with the actual applied rate on the majority of products being set at 0–5 per cent.

In accordance with GCC policy, documentation for all imported products must be authenticated by the Consulate of Bahrain or by any Arab Embassy in the country of origin.

In Bahrain, there is no requirement for imports to be made only through an appointed official agent. As far as commercial imports are concerned, the requirement is only that the importing merchant should be in possession of a valid commercial registration permitting the import of that type of commodity.

Bahrain does not have an import/export licensing regime *per se*. All businesses operating in the Kingdom are required to obtain a commercial registration license from the MOIC and to become a member of the BCCI (Bahrain Chamber of Commerce and Industry). At the time of commercial registration, the applicant may then designate the business to allow import/export.

Bahrain applies the same non-preferential rules of origin to imports as the other five GCC member countries. Under this scheme, products are considered as originating from the country where they are wholly obtained or where they underwent substantial transformation, with at least 40 per cent of local value added. A certificate of origin produced by the original

exporter and legalized by a recognized authority in the country of export is required for import clearance.

Ministry of Industry and Commerce

The MOIC is responsible for trade policy formulation and for the implementation of FTAs (Free Trade Agreements). In this regard, the Ministry, through its Directorate of Foreign Trade Relations, seeks to encourage external trade by spreading awareness of Bahrain's trade policies and its various multilateral and bilateral agreements and by building domestic capacity. Working closely with the BCCI, the MOIC works to expand trade relationships, encourage joint ventures and generally to facilitate international trade.

As an integral part of Bahrain's MOIC, the Directorate of Foreign Trade Relations plays a pivotal role in assisting and developing trade relations between Bahrain and the international trade community. A thorough understanding of local, regional and international trade legislation enables the Directorate to assist with virtually any trade-related matter. By advising and liaising with various bodies, the Directorate helps in building an environment of opportunity for both Bahraini companies, seeking access to world markets, and foreign companies interested in doing business in Bahrain.

Bahrain and the world

As a founding member of the WTO, Bahrain is a very keen proponent of the Multilateral Trading System. It also takes pride in the diligent implementation of all legislative and institutional requirements for the implementation and enforcement of all WTO agreements and applications. As a small economy, Bahrain endorses the staunch application of the Special and Differential Treatment for developing and small economy countries, and values the fairness and objectivity of WTO's Dispute Settlement Body.

Bahrain's active participation in the MTN (Doha Round of Multilateral Trade Negotiations) is evidenced by the positive offers and proposals submitted to different areas of the negotiations, especially in the field of services, to which Bahrain attaches great importance, in particular financial services, construction, telecommunications, transportation and tourism.

As far as Non-Agricultural Market Access (NAMA) is concerned, Bahrain welcomes a fair and balanced tariff reduction formula, or approach, which would allow small and developing countries to achieve rewarding industrial policies and diversification objectives, to support national and niche industries, job creation and viable SMEs (small and medium-sized enterprises). Bahrain upholds the Doha and Hong Kong mandates for eliminating

market access barriers, tariff escalation, tariff peaks, in particular on products of export interest to developing countries.

2nd Trade Policy Review

All countries that are members of the WTO are required to undergo a Trade Policy Review (TPR), at frequencies determined by the relative importance of each individual member in terms of their specific share in world trade. For all practical purposes, this means that the top four trading nations, which count the European Union (EU) member countries as one, are reviewed every two years, the next 16 countries are reviewed every four years and other members, which includes Bahrain, every six years.

Bahrain underwent its second TPR by the WTO Secretariat during 2007. Having received 99 written questions, some with multiple sub-questions, from 10 WTO member countries prior to the TPR meeting in Geneva, and a number of verbal questions from members during the first day's proceedings, members expressed their congratulations to Bahrain on its economic development since 2000, the transparency of its trade policies and performance at the TPR.

The official documents of the TPR, comprising the WTO Secretariat Report, the Bahrain Government Report together with the minutes of the meeting, which includes members' questions and Bahrain's responses, are all available on the WTO website at www.wto.org and are an authoritative source of information and data regarding Bahrain's trade policies and the general trade environment.

Bahrain and the region

GCC membership

Bahrain is a founding member of the GCC, along with Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Since 1981, the free-trade area has been effected among GCC members by eliminating customs duties on all products originating in the member states.

In December 2001, the GCC Economic Agreement was signed to provide for a GCC Customs Union and the harmonization of economic, financial and monetary policies, with a view to achieve more economic integration through the establishment of the Gulf Common Market (GCM) and Gulf Monetary Union.

In addition to cultural and kinship ties within the region, the GCC provides Bahrain with common regional economic, social and political stability, economies of scale, industrial complementarity and trade creation advantages.

The GCC is presently engaged in negotiating an FTA with the EU. Other FTAs are also anticipated with other groupings and countries like the EFTA (European Free Trade Association), Japan, MERCOSUR (Southern Common Market), China, India, Pakistan, Singapore and Turkey.

GAFTA membership

Bahrain is also a founding member of the GAFTA (Greater Arab Free Trade Area), which was signed on 19 February 1997, entered into force on 1 January 1998, and supposed to have eliminated most tariffs among its members on 1 January 2005. At present, Bahrain is negotiating within GAFTA a regional agreement for trade in services, where Bahrain and most member countries have greater competitive advantage.

Bilateral agreements

Bahrain, as of August 2006, has a bilateral FTA with the United States, and a further 33 bilateral agreements in various fields, such as investment encouragement, avoidance of double taxation, economic, trade and technical cooperation are in force, together with five agreements awaiting ratification.

FTA with the United States

The Kingdom of Bahrain entered into the FTA with the United States as a natural progression from the signing in 1999 of the Treaty on the Encouragement and Reciprocal Protection of Investments, and the subsequent completion of the TIFA (Trade and Investment Framework Agreement) in 2002. The FTA negotiations were focused and determined, and the whole process was concluded within a period of six months. The Agreement promotes a liberalized, non-discriminatory trade environment, enhances intellectual property rights protection, and Bahrain's commitments ensure transparency of laws, regulations and efficiency in customs administration.

Other areas covered by the FTA include financial services, telecommunications, e-commerce, intellectual property rights, government procurements, customs procedures and also include commitments on environment, worker rights, anti-corruption and trader protection.

Since the FTA was implemented only in August 2006, it is really early days yet to be assessing the results, but early indications are of a substantial increase in the volume of both trade and inward investment. In particular exports of aluminium products and textiles, and imports of motor vehicles, aeroplane parts and machinery are showing strong improvement.

PART TWO

Legal and Regulatory Framework

2.1

Legalities, Policies and Procedures for Doing Business

Hugh Stokes, Hatim S. Zu'bi & Partners, Attorneys and Legal Consultants, Bahrain

Introduction

Over recent years, Bahrain has advanced and liberalized its laws and expertise with regard to foreigners doing business. For some decades, the attitude of the authorities was directed towards protection of local investments in order for the country to establish a sound economic base, but in the past few years great strides have been taken towards liberalization. Provided its activities are not reserved for Bahrainis only, it is permissible to set up an 'onshore' company that can be 100 per cent non-Bahraini owned.

Methods of establishing business

A foreign company may establish business in a number of ways. It may establish a branch or representative office, with or without a sponsor, depending on its activities; it may establish a local onshore company, again with or without local participation according to its activities; it may incorporate a joint venture; or, for larger projects, it may incorporate a Bahrain shareholding company (exempted from banking and insurance business).

Branch or representative office

Either may be established, but a branch must have a sponsor unless it is to conduct activities for which a sponsor is not required and the Bahrain branch or representative office will be the company's regional centre. The Commercial Companies Law (Decree Law No. 21/2001) provides that companies not requiring a sponsor are those in the fields of telecommunications, high technology, educational and training services and miscellaneous consultancy services.

A local sponsor's role is to assist the foreign company in obtaining registration, negotiating with government departments, obtaining work permits and visas and advising on business opportunities. A sponsor may be paid a fixed annual fee or a percentage of turnover or of profits if the branch is actually conducting business.

Method of establishment

The Ministry of Industry and Commerce requires the following documents to be submitted, preferably notarized and legalized, in Arabic or English:

- corporate documents (Memorandum and Articles of Association, or equivalent);
- latest audited annual accounts;
- board resolution (or equivalent) to open the branch;
- power of attorney in favour of the manager of the branch;
- guarantee from the head office to be responsible for any proven debts of the branch.

In addition to the above, the branch must have its own premises (leased) in a commercial building that is subject to inspection by the municipality as a condition of registration. Moreover, the sponsorship agreement must also be filed with the application.

Commercial registration fees are payable on registration as a condition of registration, and annually thereafter. There is a fixed fee of 20 Bahraini dinars (BHD, approximately £35)) per annum.

No accounts have to be filed. No business may be conducted, bank accounts established or telephone, fax or telex connected until the branch is registered.

The time taken to register a branch is between one and four weeks.

Company formation

Under the Commercial Companies Law, there are several types of company, but those that concern a foreign entity are:

- joint-stock company;
- WLL (limited liability company);
- single-person company;
- variable capital company.

In general, partnerships and limited partnerships for commercial activities are permissible for Bahrainis only (except professional partnerships; see below) and will therefore not be considered here in detail.

Joint-stock company

This type of company requires a minimum capital of BHD 250,000 (unless it is a fund issue in which case the minimum capital is BHD 1,000).

Limited liability company (WLL)

This is in the form of a French Société à Responsabilité Limitée (no exact equivalent in English law). The minimum number of shareholders is two, the minimum capital is BHD 20,000, and there is no need for a board of directors (management is conducted by one or more managers). Shareholder meetings must be held once a year. Audited accounts must be filed (except for family companies).

To do business 'onshore' Bahrain (ie with Bahrain clients or customers), a WLL or a branch is the correct vehicle. This type of company is the most popular with foreign investors.

Table 1. Limited liability company requirements

Minimum capital shareholding	BHD 20,000
Need to hold meetings in Bahrain	Yes
Need to file annual accounts	Yes
Commercial registration fee	BHD 20
Need for board meetings to be held in Bahrain	No
Need to have its own premises	Yes (an accountant's or lawyer's office is not sufficient)
Pre-emptive rights on share sale and capital increase	Yes
Maximum capital	No
Minimum number of shareholders	2
Minimum and maximum number of directors	None; management may be conducted by 'managers'
General meetings of shareholders	At least one annually
Currency of capital	Bahraini Dinar or US Dollar

Single-person company

These companies need to have only one shareholder; the minimum capital is BHD 50,000. In all other aspects they resemble a WLL. If the sole shareholder being an individual dies, the heirs must convert the SPC (single-person company) to a WLL.

Variable capital companies

Pursuant to Ministerial Order No. 17 of 1986 as amended by Ministerial Order No. 13 of 1994, variable capital companies may be formed as joint-stock companies, of which there are two classes of capital:

- **Management shares:** there must be at least two shareholders, and only the holders of these shares have voting and management powers.
- **Participation shares:** these shares participate in the increase of value of the assets of the company and its annual profits, but carry no management or voting rights.

The issued share capital must currently be no less than BHD 500,000 and the authorized share capital must not be more than 10 times the issued share capital.

Originally introduced so that participating shareholders could participate in Islamic investments whereby their shares could be redeemed on completion of the underlying investment, the scope has been widened to include non-Islamic projects. The formation procedures are the same as for other joint-stock companies; the annual registration fee is BHD 20,000.

Common elements

Foreign shareholders must submit the following to the Ministry of Industry and Commerce, preferably notarized and legalized (exceptions can be made), in Arabic or in English:

- memorandum and articles;
- latest audited accounts;
- board resolution (or equivalent) to establish company;
- power of attorney to a named person to sign the notarized memorandum of association.

A foreign shareholder who is an individual must submit:

- copy of passport;
- bank reference;
- CV.

Incorporation documents are submitted in draft to the Ministry of Industry and Commerce for approval together with the foreign company's documents listed above, and details of the second shareholder (if an individual, then his passport copy, CV and bank reference only are required).

The incorporation documents of the Bahrain company are:

- **Joint-stock company:** memorandum and articles of association;
- **WLL:** memorandum of association only.

Capital must be paid up in cash into a local bank as a condition of registration. Shares may be subscribed for in kind subject to the valuation procedures stated in the Commercial Companies Law. Together with an

application form and fee, a certificate from a local bank that the capital has been paid up in full must be submitted.

Upon receipt of approval from the Ministry of Industry and Commerce, the incorporation documents must be signed in front of the Notary Public of Bahrain (in the Ministry of Justice) and then filed with the Ministry of Industry and Commerce in order for the commercial registration to be effected. When this is completed, the Ministry of Industry and Commerce issues a commercial registration number, which needs to be quoted on all company documents and signs.

Companies must make a statutory reserve of 10 per cent of net profits in every year until the reserve reaches 50 per cent of the capital (or a higher percentage if the company's memorandum and articles so provide). Formation of a company takes between one and eight weeks.

Management of Bahraini companies

It is quite common for a Bahraini company to enter into a management agreement with a foreign shareholder; sometimes this is reflected in the memorandum and articles of the Bahrain company and provision may be made for a management fee to be payable in addition to the dividends to be earned by the foreign participants. In the case of a WLL, the management powers may be entrenched, and only withdrawn by a vote of at least three quarters of the shareholders.

Professional practices

Accountants and auditors are regulated by the Ministry of Industry and Commerce pursuant to Decree Law No. 26/1996. Internationally recognized firms may be registered in the Auditors' Register.

Engineers and engineering consultants are regulated by the Ministry of Works and Agriculture pursuant to Decree Law No. 17/1982 (as amended). There are strict professional standards and experience levels that are required to establish and maintain a license.

Lawyers and advocates are regulated by the Ministry of Justice pursuant to the Bahrain Advocates Law of 2005. Only Bahraini or GCC (Gulf Cooperation Council) citizens may practice advocacy, and only Bahraini-owned firms may advise on Bahraini law. Foreign law firms may obtain 'offshore' licenses and are restricted to advising on their own laws.

Unincorporated joint ventures

These are not companies as such and the foreign partner will need to be sponsored by the Bahraini partner; normally a branch of the foreign partner

is established in accordance with the procedures listed above. Such arrangements are almost invariably linked to particular projects usually in the civil engineering and construction fields, but this is not a condition of the formation of a joint venture. As a joint venture is not a separate legal entity, there are no capital requirements.

Taxation

There are at present no personal or corporate taxes in Bahrain and no withholding, stamp or capital gains taxes, nor is there any exchange control. There are no current plans to introduce tax or exchange controls.

Customs duties (the rates varying according to class) and municipal rates (being 10 per cent of rent) are payable. Exemption from customs duties may be available for imports from other GCC countries.

Language

The official language is Arabic, but English is widely spoken and is accepted for applications to government departments in many instances (eg applications to the Ministry of Industry and Commerce and the CBB (Central Bank of Bahrain) are almost always made in English).

Ownership of land

Until recently, ownership of land in Bahrain was not permitted for foreigners except by special permission from HH the Prime Minister. However, Law No. 2/2001 has made it possible for non-Bahrainis (other than GCC citizens who already had the right) to own buildings and land, and also for certain types of company that are wholly non-Bahraini owned, subject to conditions to be resolved upon by the Council of Ministers.

World Trade Organization

Bahrain has been a member of the World Trade Organization since 1997 and, progressively, legislation will be introduced – in, for example, the fields of commercial agencies – to comply with its rules.

2.2

Corporate Governance

Dominic O'Neil, Trowers & Hamlins, in conjunction with Elham Ali Hassan & Associates

Introduction

Although Bahrain has no legislation that specifically relates to corporate governance, various provisions in existing legislation have the effect of regulating the way in which companies are directed and controlled. In particular, the Commercial Companies Law (Legislative Decree No. 21 of 2001) and its Implementing Regulations (Ministerial Order No. 6 of 2002) (the Law) govern the way in which companies are permitted to operate.

All companies operating in Bahrain must take one of the legal forms provided for in the Law and comply with its provisions, and there are a number of different corporate vehicles available to investors. In this discussion, references to a company are to a Bahrain public joint-stock company unless otherwise indicated.

Corporate governance can be placed in the context of duties of directors, the company secretary, financial reporting and the company auditor. Governance now also embraces issues such as the AGM (annual general meeting), communications with third parties and relationships with shareholders.

Directors

Any discussion of corporate governance must be placed in the context of directors' duties. One aspect of the function of directors is to ensure the preservation and enhancement of the company's assets, whilst the other concerns the duties and liabilities of directors with respect to the company, its employees and third parties.

A Bahraini joint-stock company, be it public or closed (ie private), must establish a board of directors to administer its operations. In the case of a public joint-stock company, there must be a minimum of five directors, whilst for a closed joint-stock company the minimum required number is three. In each case, the term of office of a director must not exceed three years.

The Ministry of Industry and Commerce retains a qualified right to dissolve a company's board of directors if the company:

- experiences adverse financial or management conditions;
- suffers substantial losses affecting the rights of shareholders or rights of its creditors;
- commits serious breaches of the Commercial Companies Law.

The Ministry may only exercise this right where, on an inspection of the company's accounts and records, it has prepared a report that confirms that one of the above events has taken place. In addition, the Ministry may dissolve the board if the board is unable to conduct its business due to an inability to attain the necessary quorum.

First and foremost, company directors in Bahrain are responsible to their shareholders. They are required to exercise due care and diligence in the course of their duties and will be held jointly liable for any damages that may be sustained by the company or by third parties as a result of a failure to do so.

Non-executive directors

Article 177 of the Commercial Companies Law permits a company's general meeting to appoint a number of experienced members to the board of directors who are neither shareholders nor promoters of the company (non-executive directors).

As members of the board, non-executive directors must comply with the duties and obligations placed on directors by the Commercial Companies Law and other related laws. Notwithstanding this, the specific role of the non-executive director, over and above his/her role as a member of the board, is to assist in the development of the company's strategy by:

- bringing his or her own expertise to the board;
- voicing an independent opinion (being one step removed from the executive management of the company);
- reviewing the performance of the board and the executive management; assisting in areas of conflict or potential conflict;
- ensuring that directors are accountable to the company's shareholders.

In this regard, a non-executive director will attend board meetings and general meetings and will be remunerated in recognition of his independent and expert contribution on various issues. These include risk, strategy and performance and of his/her supervision of the executive directors.

Directors' remuneration

A company's articles of association must specify the remuneration of directors and non-executive directors. The law limits the amount of such remuneration to 10 per cent of the company's net profit after the deduction of legal reserves.

Article 189 of the Commercial Companies Law prohibits a director of a company, or any of its managers, from having an interest, whether directly or indirectly, in any transactions or contracts made on behalf of the company, unless the director has obtained the consent of the general meeting. Any such contract entered into will be declared null and void.

In addition, a director must declare to the board any personal interest, whether direct or indirect, that he has or may have in any matter placed before the board for discussion. The declaration must be noted in the minutes of the board meeting and the interested director is not permitted to participate in the discussions or voting in respect of the matter. The chairman of the board must specifically inform the general meeting of the outcome of discussions in connection with the matter and must table a special auditor's report. Any such contracts or transactions entered into by the company must be disclosed in the company's financial statements.

Board meetings

Board meetings may be convened upon the summons of the chairman or alternatively, by at least two members of the board. To constitute a quorum, the presence of more than one-half of the board's members including the chairman must be present.

The majority voting system is to be adopted. However, in the case of equality of votes, the chairman shall have the casting vote.

Article 194 states that the minutes of board meetings must be entered on a regular basis after every meeting in a special register. The said minutes ought to be signed by the chairman, any members who attended the meeting and the board secretary; thus, they shall ultimately be liable for the accuracy of the minutes. In addition, the minutes must contain information concerning the names of the members and non-members of the board present at the meeting, including those who failed to attend providing a reason for their absence.

A detailed summary of all the board's discussions, including developments and requirements of members, must also be recorded.

In the event of a dissenting member who wishes to object to a resolution by the board, his objections must be recorded in the minutes.

Annual report

The annual report is a primary instrument in communicating to shareholders all corporate governance issues. An open approach in discussing such matters must be adopted in order to produce an efficient working environment for the market economy, enabling the board to take prompt action whilst simultaneously allowing the shareholders to scrutinize the company's actions more thoroughly.

The board of directors must publish a copy and a detailed summary of the annual report in a local daily newspaper in Arabic at least 15 days before convening the general meeting. The publication of a balance sheet, profit and loss account and a full text of the auditor's report must also be provided.

The annual report must state that the company is committed to high standards of corporate governance. The characteristics of the annual report ought to cover: remuneration, nomination, audit and internal control and communications.

Articles 362(g) provides a fine of 5,000 Bahraini dinars (BHD) for breaches of the Commercial Companies Law, which includes the preparation of any reports that come under the responsibilities of any director.

Annual general meeting

The board uses the AGM essentially to communicate with private investors and encourage their participation. However, it has also become the forum to discuss a wide range of governance issues.

The power to convene an AGM may be exercised by the chairman, the board of directors and the auditor. The Ministry of Industry and Commerce may also summon an AGM in the event that one month has elapsed from the date fixed for its convention without it being summoned, or in the event that the number of the members of the board of directors is less than the minimum required for the validity of its convention, or provided there are legitimate grounds for requisition by shareholders holding at least 10 per cent of the capital. The Minister of Industry and Commerce also has the power to convene an AGM if it is felt that there are serious grounds for such a meeting. In such an event, the agenda shall be prepared by the individual who convened it.

The summons must include the date and the venue prescribed in the company's articles of association and must convene at least once every year within six months following the date on which the financial year of the company ends. The summons must be published in at least two Arabic newspapers, one of which must be local. Copies of the summons must also be forwarded to the Ministry of Industry and Commerce at least 10 days prior to the date of the meeting.

Only topics mentioned in the agenda may be discussed at the meeting. However, if an urgent matter has arisen subsequent to the preparation, it

may be discussed. Any resolutions resulting from such matters must be referred to the Ministry of Industry and Commerce, otherwise they will be deemed null and void.

Governance and insider dealing

Poor performance and abuse of authority by the directors of the company paves the way for corporate failure. It is essential for a company to implement internal mechanisms that ensure the compliance with the company's objectives and underpin the overall management and running of the company.

Article 185 of the Commercial Companies Law states that all directors owe a duty to the company, its shareholders and any third parties to fulfil all their duties and to act in good faith. Any act involving betrayal of trust, misuse of power, breach of the law or of the company's articles of association or mismanagement of the company can result in action against the board.

The company has the right to institute an action against any of the directors involved if the wrongful acts committed by them resulted in damage to all shareholders. A resolution needs to be passed at a general meeting to initiate the action.

Shareholders

Shareholders play an additional role in good corporate governance.

Right to vote

The owner of ordinary shares in a company has the right to vote at the ordinary and extraordinary general meetings of the company. Resolutions of the ordinary general meeting are passed by a simple majority of the shares represented at the meeting. The following matters, together with any matters included on the agenda that do not fall within the jurisdiction of the extraordinary meeting, are to be decided upon at the ordinary general meeting:

1. the election or dismissal of board members;
2. decisions with respect to the remuneration of the board;
3. consideration of the company's annual report and financial statements;
4. the absolution of the directors from liability;
5. the appointment of an auditor;
6. review of the auditor's report;
7. the approval of financial statements, together with the allocation of net profit and the payment of any dividends;

8. the discussion of any recommendations for issuing bonds, borrowing, mortgaging or issuing guarantees.

Any proposals to amend a company's memorandum and articles of association, to increase or reduce its share capital, to dispose of the entirety of a company's business and to dissolve, convert or merge the company must be dealt with at an EGM (extraordinary general meeting).

An EGM is not valid unless attended by shareholders representing two-thirds of the company's capital. Resolutions of the EGM are passed by a majority of two-thirds of the shares represented at the meeting, with the exception of resolutions in connection with a change to the company's share capital, an extension of its duration or its winding-up or conversion or merger with another company – all of which require a majority of three-quarters of those shares present.

Institutional shareholders

Changes in regulations have resulted in a drive towards the local Bahraini market, due to the ill-performance of overseas markets. This paved the way for institutional investment in Bahrain to flourish, as there has been an increase in foreign ownership and a growing number of investment funds actively investing in local stocks.

Accordingly, institutional shareholders are increasingly demanding a voice in corporate governance. This requires a greater level of accountability, transparency and provision of back office resources to ensure that they can play an effective role as concerned and active shareholders.

The involvement of institutional investors will ultimately lead to the enhancement of corporate governance, as they may be classed as controlling shareholders in class actions against the company. Therefore, institutional investors are most likely to undertake their duties with the utmost scrutiny.

2.3

The Legal Environment and Settlement of Disputes

Hugh Stokes, Hatim S. Zu'bi & Partners, Attorneys and Legal Consultants, Bahrain

Background

Bahrain is an independent Kingdom situated in the Arabian Gulf and is a member of the GCC (Gulf Cooperation Council). It is governed by a Constitution first promulgated in 1973, and a new Constitution promulgated in 2002. Work is in hand to produce a revised Constitution.

For many years prior to 1971, Bahrain was a British protectorate but it retained its internal laws and legal systems. Statutes are promulgated by decree of H.H. The King, Shaikh Hamad bin Isa Al Khalifa and are published in the Bahrain *Official Gazette*. Many decrees contain enabling powers under which various ministers make resolutions and rules that have the force of law.

Much of the legislation is based on Egyptian models, in particular the Egyptian Civil Code, and the legal system is therefore predominantly a civil (as distinct from common law) system. Some of the legislation is based on English law models, but this is the exception rather than the rule; nevertheless, new regulations (eg on banking and capital markets) tend far more towards English law and practice.

The courts are administered by the Ministry of Justice, and the civil courts (originally established by decree in 1971) have sole jurisdiction in commercial matters and are distinct and separate from the Shari'a courts.

Shari'a Law is one of the sources of law but does not override statute law or custom, and, in civil and commercial matters, is not of great significance. The charging of interest, for example, which is contrary to Shari'a Law, is provided for in certain statutes and is therefore enforceable.

Since retrocession by the British in 1971, Bahrain has been independent in all respects, but maintains strong ties with neighbouring countries, particularly those of the GCC. The 2002 Constitution has established the way forward to the democratization of Bahrain and the importance of the judiciary has been enhanced. Civil liberties, such as the inviolability of communications, are protected in that no order involving interference with any entity can be arbitrarily made but requires a court order. The King,

however, retains overall control and he alone can, for example, declare defensive war.

Legislation has grown gradually, with new laws reflecting the priorities of citizens at the time. A Civil Code, Central Bank and Financial Institutions Law and a new Commercial Companies Law have all come into effect in the past few years. A new Commercial Companies Law is in draft and may be finalized during 2008.

The form of legislation

Law reform is most usually initiated by the ministry concerned with the subject matter of any specific new or revised law. The minister concerned will discuss a proposal with the Council of Ministers (often referred to as 'the Cabinet'), which, if the matter is considered worth taking further, will instruct the Legal Affairs Directorate of the Ministry of Cabinet Affairs to prepare a draft law. A limited degree of consultation may follow, with drafts being sent to prominent lawyers and other concerned parties for comment. A draft will be presented to the Shura Council (a body entrusted with advising the King on all matters relating to the welfare and development of the country), who (perhaps after further amendments and recommendations) will return the draft to the Directorate for final preparation, and then it will be presented to the King for signature and subsequent publication in the *Official Gazette*, which will state the date on which the law comes into force, in many instances the date of publication.

Secondary legislation

Subject to the above, ministers are responsible for the creation of binding secondary legislation, by way of ministerial resolution. The relevant ministry derives its authority to legislate from Royal Decree Law and, once published in the *Official Gazette*, such secondary legislation is binding as law. Although it is possible to challenge the exercise of government administrative powers as having been *ultra vires*, it is not possible to challenge the government exercise of a discretion if it is validly authorized to exercise that discretion, unless it has not exercised that discretion in good faith in the purported exercise of its lawful authority. The Prime Minister is also empowered to issue edicts, which are binding in nature, in relation to particular matters within his sole discretion.

Administration of justice

The court system was established initially by an Amiri Decree in 1971 and has since been amended in order to introduce new courts, most importantly

the Court of Cassation, the highest court which pronounces on matters of law and whose decisions (unlike those of lower courts) are binding. The decisions of other courts are persuasive but not binding.

The Shari'a court system (dealing with matters of personal law for Muslims, such as inheritance, personal status and divorce) has no jurisdiction in respect of commercial matters.

The civil courts in Bahrain are composed of:

- the Court of Cassation;
- the High Court of Appeal;
- the HCC (High Civil Court);
- the Junior Courts and the Court of Execution;
- the Summary Action Court.

The HCC deals with all civil matters in Bahrain, including commercial matters and disputes. Final judgements of the HCC can be appealed to the High Court of Appeal. Parties may file objections against a final judgement issued by the Court of Appeal in the Court of Cassation.

It is common for the court, in cases involving complex or voluminous documentation or calculations, to refer the case to an expert, whose fees are usually payable by the plaintiff. An expert opinion is a statement of the facts and may not draw conclusions or impute liability.

In addition, there is an Administration Court. New plans to establish commercial courts, with specially qualified judges, are in train. The courts are administered by the Ministry of Justice, which has the power to fix court and notarial fees.

Alternative sources of law

Although the published legislation is the primary source of law, in the event of there being no specific legal provision on which to rely, the judge may look to custom (both general and special), to Shari'a law (in cases where this is suitable) and to general principles of equity and natural justice. The judge will only have resort to such sources if the subject matter of the case (eg a contract) is incomplete or ambiguous, and the judge requires a principle to assist him to resolve the ambiguity.

Cases are conducted in Arabic and all advocates must be Bahraini citizens or citizens of a GCC country. Interpreters are available, as officials of the Ministry of Justice, to assist in cases where a litigant or witness is not fluent in Arabic.

Pleadings are in writing and are submitted to a judge who will require the other party to file a pleading in reply. Oral advocacy is not resorted to very often, but is usually confined to urgent applications for emergency orders, such as arrest of a vessel.

International aspects

Bahrain, as a member of both the GCC and the Arab League, recognizes and enforces judgements and orders made in countries belonging to those organizations, but not elsewhere, and at present there are no treaties or conventions whereby recognition and enforcement of Bahraini courts and those of foreign courts (other than those countries referred to above) is imposed. However, Bahrain is a signatory to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

Dispute resolution

Arbitration as a method of dispute resolution is quite popular because:

- under Bahrain law, unless both parties agree otherwise, an arbitration must be concluded within 90 days;
- it is possible to conduct the proceedings in English.

This is important, in particular, in contracting and shipping cases where the documentation tends to be in English.

On conclusion of the arbitration, the arbitrator, or arbitral tribunal, must file the award in the HCC within three days of the award; the judge then places an authorization on the award, which is then eligible for execution in the same way as a judgement of the Bahrain court.

2.4

Employment Law

Hugh Stokes, Hatim S. Zu'bi & Partners, Attorneys and Legal Consultants, Bahrain

Employment law regulations

General

The relationship between an employer and an employee in Bahrain is governed by the Labour Law for the Private Sector, Decree Law 23/1976 as amended by Decree Law 14/1993 ('the Law'). An employer must give preference to Bahraini nationals, thereafter other Arab nationals and finally non-Arab foreigners (Article 13). Such priority depends on the prospective employee being suitably qualified. If there are Bahrainis in the labour market qualified to take a particular post, then a work permit for a foreigner will not be issued in respect of that post. From time to time, the Ministry of Labour announces posts that are restricted to Bahrainis.

Employee statutory rights

An employee is entitled to the following statutory rights under the Law:

- Working hours: 8 hours per day, 48 hours per week; the basic and extra hours of work shall not exceed 60 hours per week, unless special permission is obtained from the Ministry of Labour; during the holy month of Ramadan, for Muslim employees 6 hours per day, 36 hours per week (Article 78).
- Friday is a weekly day of rest and there are 12 other public holidays in the year (Articles 80 and 81).
- Overtime payments: daytime = salary plus 25 per cent; night work and public holidays = salary plus 50 per cent (Article 79).
- Annual leave: minimum 21 days for the first five years, 28 days thereafter (Article 84).
- Sick leave: 15 days with full pay, 15 days with half pay and 15 days without pay; accumulation up to 182 days (Article 82).
- Compassionate leave (Article 87): an employee is entitled to leave with full pay in the following circumstances:

- three days in case of marriage;
- three days in case of the death of a spouse or any relative up to the fourth degree of relationship;
- three days in case of death of any relative of a spouse up to the first degree and one day up to the fourth degree;
- one day in case of the birth of children.
- Leaving indemnity (Article 111): except for those employees who are covered by the GOSI (General Organization for Social Insurance), ie Bahrainis in establishments with 10 or more employees, all employees are entitled to leaving indemnity on termination (except termination for cause, in which case leaving indemnity is forfeited, or resignation within three years). Under Article 111, on termination the employee is entitled to receive leaving indemnity based on 15 days' wages for each year of the first three years of service and one month's wages for each year of service thereafter. Any period of less than a year entitles the worker to a pro rata payment. Leaving indemnity is paid on the final payment of salary and is calculated by reference to the final payment of salary or wage (as defined in the Law) at the time of termination of the employment. On resignation by the employee, the calculations are as follows:
 - up to three years' employment: no leaving indemnity is payable;
 - between three and five years' employment: five days' salary per year of service for the first three years and 10 days for the fourth and fifth year and pro rata for any uncompleted year of service;
 - above five years' employment: 15 days per year for the first three years and one month for each year of service thereafter, plus pro rata for any uncompleted year of service.

Type of employment contract

There are usually two types of employment contract, namely fixed and indefinite term contracts.

Content of employment contract

Every employee must have an employment contract (Article 38), which must contain the following principal particulars:

- the name of the employer and the address of the establishment;
- the name of the worker, his qualifications, nationality, occupation, residential address and personal particulars of identity;
- the date of appointment;
- the nature, type and place of employment agreed to in the contract;
- the period of the contract, if for a fixed period;
- the salary or wage agreed, method and time of payment and all elements of benefits received in cash or in kind in respect of the salary or wage agreed upon;

- any additional special conditions agreed to by the two parties.

Under Article 41, an employment agreement may provide for a maximum three-month probationary period. During the probationary period, employment may be terminated by either party on giving one day's notice to the other in writing. In the absence of a written contract, the worker alone may establish his rights by all means of proof.

Validity of the employment contract

With regard to the validity of any contractual restriction in view of statutory rights, Article 153 provides:

save where it is more favourable to the worker, any condition of an individual contract of employment which does not conform with the provisions of this Law, even if entered into before the commencement of the application of this Law, shall be null and void. Any agreement to forfeit or to relinquish any rights or obligations whatsoever under a contract of employment during its duration, or within one month of the termination thereof, shall be deemed to be null and void if such agreement is in contravention of the provisions of this Law.

Employee tax

There is no tax as such relating to employees, but all the employers must subscribe to GOSI. There are currently two classifications of benefit: Old Age, Disability and Death (covering Bahrainis only) and Employment Accident (for all employees).

	Employer's Contribution (%)	Employee's Contribution (%)
Bahrainis		
Old age, disability and death	7	5
Employment accident	3	—
Non-Bahrainis		
Employment accident	3	—

In addition, there is a law to provide unemployment benefits: this consists of a payment of 1 per cent by the employer and 1 per cent by the employee; however, a number of employers have agreed to assume the employees' contribution.

Medical treatment

At present, medical treatment for employees is available at government hospitals for a nominal fee. However, employers can take up medical insurance through various local insurance companies. (Compulsory medical insurance for all expatriate employees is presently (early 2008) being debated. It is already compulsory for employees over 60 years of age.)

Primary health care

In accordance with Ministerial Order No. 1/1977, employers with more than 50 workers are required to register themselves with the Ministry of Health for provision of primary health care for their workers. Such employers are required to make the following payments to the Ministry of Health:

- 30 Bahraini dinars (BHD) annually for each non-Bahraini worker;
- BHD 18 annually for each Bahraini worker.

Training levy

In accordance with Ministerial Order No. 13/1979, employers with more than 200 employees, who are not able to provide training to Bahraini nationals, are required to pay to the Ministry of Labour a training levy of 2 per cent of the total annual wages of Bahraini employees and 4 per cent of the total annual wages of expatriate employees.

‘International’ contracts

Where an employer provides an ‘international’ contract, the Bahrain Labour Law will nevertheless apply in respect of the period of employment in Bahrain.

Article 12 notification requirements

Article 12 states: ‘Every employer shall submit to the Ministry of Labour in January of each year, the particulars as required hereunder:

1. the number of workers employed by name, classified according to the nature of their occupation or job classification, the rate of wages, age, sex, nationality and the appropriate number and date of their respective work cards;
2. the number of jobs which became vacant or were created during the preceding year, the number filled, those which remained unfilled and

the reasons therefore, together with the nature thereof and the wages relating thereto;

3. the general state of business, related employment opportunities and the anticipated increase or decrease in such opportunities during the coming year.

Every employer is required to submit, at intervals of three months, notification of any anticipated reduction in manpower in his establishment. This notification shall be recorded on a *pro forma* to be prescribed by the Ministry of Labour.

2.5

Commercial Agency Law

Hugh Stokes, Hatim S. Zu'bi & Partners, Attorneys and Legal Consultants, Bahrain

Introduction

The Law relating to Commercial Agency in Bahrain ('the Law') is set out in Decree No. 10 of 1992, as amended by Decree No. 8 of 1998. Under Article 1 of the Law, a commercial agency is defined thus:

A commercial agency shall mean, for the purpose of enforcing the provisions of this Law, representing the principal in distributing commodities and products or offering thereof for sale or trading purposes, in consideration of a profit or commission, or providing facilities, of whatever nature. This shall include agencies for land, marine and air transport, tourist and travel agencies, services, insurance, publications, printing, press, publicity and advertising agencies, and other business activities for which an order is issued by the Minister of Commerce.

Franchises and agencies distinguished

In Bahrain law and practice, the most important distinction between a franchise and an agency is that a commercial agent imports goods for resale, a franchisee exploits a system or a name. Some relationships widely described as franchises are really commercial agencies, others which are clearly franchises have in the past been registered as commercial agencies; however, it is unlikely that the Ministry of Industry and Commerce would admit a genuine franchise for registration as a commercial agency at the present time. If a relationship is in fact a commercial agency but is described in an agreement as a franchise, it will be classified as a commercial agency for the purposes of the law.

Registration

All commercial agency agreements, as well as any amendments to the agreements, must be registered in the Commercial Agencies' Register at the Ministry of Industry and Commerce. Article 13b of the Law states that 'Any unregistered agency shall not be recognized, nor shall any action be heard in respect thereof, which means that if the agreement is not registered, neither party to the agreement would have any legal recourse under Bahraini law for a breach of the agency agreement in whatever form.

An application for registration (or renewal) is made by completing the relevant application form provided by the Ministry of Industry and Commerce and submitting it to the Ministry together with a copy of the agency agreement and the prescribed fee.

All applications should be considered within 30 days of the date of submission of the same. Once the application to register has been granted, a certificate will be provided to the agent, confirming the registration or renewal. It should be noted that renewal of registration must take place within two months of the lapse of two years since the original registration or most recent renewal, after which time the Ministry of Industry and Commerce will be empowered to strike off the registration of the agency.

The registration and renewal of every agency is published in the *Official Gazette*.

An agent (if an individual) must be registered as a merchant and, if a company, must be 51 per cent Bahraini-owned. In practice, agencies are only permitted to be held by companies, if they are 100 percent Bahraini-owned, with very few exceptions. Under the Free Trade Agreement with the United States, US nationals and companies may now act as agents.

Content of the agency agreement

Pursuant to Article 3 of the Law, an agency agreement contains the following details:

- the names of the agent and the principal, and the nationality of each of them;
- the properties, goods and services included in the agency, as well as the rights and obligations of both the agent and the principal and the amount of profit or commission to which the agent is entitled in consideration of his agency;
- the agent's area of operation;
- the agency's term, if it is for a fixed period;
- the area of business of both the agent and the principal;
- the brand name or trademarks of the goods;
- the agent's obligation to provide adequate spare parts and necessary

maintenance to repair vehicles, machinery, engines, equipment or electrical or electronic appliances covered by the commercial agency;

- the arbitration clause, if any;
- any other terms and conditions agreed upon between the agent and the principal provided that they do not conflict with the provisions of this Law.

Exclusivity

Until the implementation of the 1988 Law, all agencies were exclusive as a matter of law, but since then, exclusivity is a matter of contract, and therefore the agency agreement should specify whether it is exclusive or non-exclusive. The 1988 Law is not retroactive and any exclusive agency entered into earlier will remain exclusive, unless amended by agreement of the parties.

Duration and termination

An agency agreement can be either fixed term or indefinite. Where an agreement has a fixed term, the agency shall only be terminated on the expiry of the fixed term. Both parties can of course agree to the renewal of the contract on the termination of the same. A fixed-term agency agreement can only be terminated early and/or registered in the name of another agent, where both parties consent to this course of action.

If a principal withdraws from a fixed-term agency before the expiry of its term, the agent may claim compensation for breach of contract. If the principal does not renew the agency on expiry of its term, the agent may claim compensation if his business activities have resulted in an obvious success in promoting the principal's products or increasing the number of customers, but the principal's refusal to renew the contract has prevented the agent from benefiting therefrom. The agent's right to claim cannot be waived.

When the contract is for an indefinite term, either party may apply to the Ministry of Industry and Commerce for a decision as to whether to strike off the agency, even if the other party does not agree. The agent has the right (which cannot be waived) to seek compensation on the same lines as compensation for non-renewal of a fixed-term contract.

Within one month of the termination of any agency or the expiry of any agency agreement, an agent or his legal representative must file an application with the Ministry of Industry and Commerce for striking off the agency's registration.

Compensation

It will have been noted that an agent's right to claim compensation cannot be waived. This does not mean that compensation is automatically payable. The agent must prove his loss; but it would be possible to place a cap on the amount of compensation (if any) that might become payable, either by reference to a fixed figure or to a formula based on past performance.

Appointment by intermediary

An agency may be registered between an agent and an intermediary (eg a regional or global agent, or an export house) provided that the intermediary has the authority (which must be demonstrated to the Ministry of Industry and Commerce) to appoint a local agent in Bahrain. An agency need not be exclusive, and there is no mandatory requirement for all imports to be conducted by an agent; direct imports are permissible.

Transfer of agency

If an agent (being an individual) dies, or if the company holding the agency is sold or merged, the agency will survive and the heirs, or buyer or the merged company (as the case may be) has the option (but not the obligation) to continue with the agency, in which case the rights and obligations will remain the same. If the agency is for a fixed term, this will continue until expiry of the term.

If an agency is transferred, the new agent must purchase the stock held by the former agent (provided it is in good condition) at the market, or cost price whichever is less, plus 5 per cent of the cost price.

Both the new agent and the principal shall, on transfer of an agency, become jointly liable for all undertakings given by the previous agent to any third parties, arising from the contract. The liability will only extend to the price of the goods or services agreed to be provided by the previous agent.

Disputes

If the agency contract contains an arbitration clause, disputes shall be resolved by arbitration and an arbitral award may be enforced through the Bahraini courts. If the arbitral award is made overseas, it may still be so enforced as Bahrain is a signatory to the New York Convention.

In the absence of an arbitration clause, disputes will be resolved by the Bahraini courts. The referral of any dispute to arbitration or the filing of legal proceedings shall not prevent the goods in question from entering the

country or the services being performed. However, the Minister of Industry and Commerce has the power to ban the entry of goods or the continuation of services, if this is warranted by public interest. This only occurs extremely rarely.

New legislation

Bahrain is a signatory to the World Trade Organization (WTO), and full implementation of the WTO's principles may well have a significant effect on commercial agencies leading to amendment or repeal of current legislation in the future.

As stated above, Bahrain has concluded a Free Trade Agreement with the United States, which as far as US persons and companies are concerned, opens the market to US companies.

2.6

Regulation of Banking and Financial Services

Neale Downes, Trowers & Hamlins, in conjunction with Elham Ali Hassan and Associates

The CBB (Central Bank of Bahrain) is a public corporate entity established by the Central Bank of Bahrain and Financial Institutions Law 2006 (the CBB Law). The CBB was created on 7 September 2006 and is responsible for maintaining monetary and financial stability in the Kingdom of Bahrain. It succeeded the BMA (Bahrain Monetary Agency) that had previously carried out central banking and regulatory functions since its establishment in 1973 (shortly after Bahrain secured full independence from Great Britain).

The CBB inherited the BMA's 33-year track record and wide range of responsibilities. It is the sole regulator of Bahrain's financial sector, covering the full range of banking, insurance, investment business and capital markets activities. In this respect, its remit is thus broadly analogous to that of the Financial Services Authority in the United Kingdom.

Objectives and duties

The CBB's mandate is prescribed in the CBB Law. Article 3 of the Law defines the CBB's objectives as follows:

- to set and implement monetary, credit and other financial sector policies for Bahrain;
- to provide effective central banking services to the government and financial sector of Bahrain;
- to develop the financial sector and enhance confidence therein;
- to protect the interests of depositors and customers of financial institutions, and enhance Bahrain's credibility as an international financial centre.

The CBB's duties include the licensing and supervision of:

- banks (both conventional and Islamic);

- providers of insurance services (including insurance firms and brokers);
- investment business licensees (including investment firms, Bahrain Stock Exchange brokers, money brokers and investment advisors);
- other financial services providers (including money changers, representative offices, finance companies and ancillary service providers).

The CBB also regulates the BSE (Bahrain Stock Exchange) and acts as the listing authority for companies and financial instruments listed on the BSE. It is also responsible for regulating conduct in Bahrain's capital markets.

The CBB's wide scope of responsibilities allows a consistent policy approach to be undertaken across the whole of Bahrain's financial sector. It also provides a straightforward and efficient regulatory framework for financial services firms operating in Bahrain.

Governance of the CBB

The CBB Law specifies that the CBB shall have a board, comprising seven directors, appointed by royal decree for a renewable term of four years. The day-to-day management of the CBB is entrusted to a Governor, with ministerial rank, and who is directly accountable to the board. The Governor is appointed by royal decree for a renewable five-year term. The Governor may be supported by one or more deputy governors.

Supervision process

The CBB's supervision of licensees is a mixture of on-site assessment (including the quality of systems and controls and of books and records) and off-site supervision (which focuses on the analysis of regulatory returns, as well as of audited financial statements and other relevant public information). On-site examinations are undertaken by the CBB's own examiners, as well as by experts appointed for the purpose by the CBB (such as accountants and actuaries). Off-site supervision also includes regular prudential meetings with licensees to review performance, strategy and compliance matters (such as capital adequacy, large exposures and liquidity).

For banks, a risk profiling system has been developed to underpin the above supervisory efforts, by providing a detailed framework for assessing the impact and risk profile of individual licensees and prioritizing subsequent supervisory efforts. Work is underway to extend this profiling system to insurance companies.

Where a licensee fails to satisfy the CBB's regulatory requirements, the measures outlined in the enforcement modules of the applicable volumes of the Rulebook may be applied. Enforcement measures include formal warnings, directions (eg to cease or desist from an activity), formal requests

for information, adverse fit and proper findings, financial penalties or investigations. Extreme violations of the CBB's regulatory requirements may entail cancellation of a license, administration or criminal sanctions.

The new regulatory regime

In July 2006, shortly before the introduction of the CBB Law, the regulatory and supervisory regime applicable to banks was overhauled and simplified.

The previous categories of full commercial bank, investment bank and offshore banking unit were replaced with a system under which banks are simply licensed and regulated as retail banks or wholesale banks. Such banks may, in addition, operate conventionally or Islamically:

- Retail banks are allowed to undertake transactions in any currency with both Bahraini residents and non-residents.
- Wholesale banks, on the other hand, are allowed to undertake transactions with Bahraini residents (or denominated in Bahraini dinars, BHD) only if these are wholesale in nature (defined in terms of transaction size: BHD 7 million for a credit or deposit transaction, and US \$250,000 or more for an investment transaction). This goes some way to liberalizing the restrictions of the regulation that applied to wholesale banks.
- The principal activities of the retail banks are consumer lending, business and corporate banking, trade finance and treasury activities.
- Wholesale banks are a more heterogeneous group, engaging in a broad set of activities.

As with the carrying on of any other commercial activity in Bahrain, banks and financial institutions will be required to establish a formal corporate presence in Bahrain, which must be registered with the Ministry of Industry and Commerce. There are various types of corporate entity that may be established, but the most common form for a bank or financial institution to establish is a joint-stock company.

There are two types of joint-stock company:

- The BSC (c) (closed joint-stock company) that is not permitted to offer its shares to the public;
- The BSC (public joint-stock company) that is permitted to offer its shares to the public, and the shares of which will be listed on the BSE.

The CBB Rulebook

In its capacity as regulatory and supervisory authority for all financial institutions in Bahrain, the CBB issues regulations with which all licensees are legally obliged to comply. These regulations are contained in the CBB

Rulebook (Rulebook). The rules set out in the Rulebook have a binding effect.

When complete, the Rulebook will comprise six volumes pertaining licensing and regulating the activities of:

1. conventional banks in Volume 1.
2. Islamic banks in Volume 2.
3. insurance and re-insurance companies (including those providing Shari'a compliant insurance in the form of *takaful* and *retakaful*) in Volume 3.
4. investment firms (ie those entities providing 'regulated investment services' but not extending credit and/or accepting deposits or extending Shari'a compliant finance structures and products) in Volume 4.
5. so-called 'ancillary' or specialist service providers, such as providers of consumer finance, credit card operations, money-changers and the activities of the Housing Bank in Volume 5. This volume is currently under preparation and has not yet been issued.
6. capital markets in Bahrain in Volume 6. Module CIU (Collective Investment Undertakings), which covers the establishment and operation of collective investment undertakings, has recently been issued and the remainder of the volume is expected to be issued by the end of 2007.

The main areas covered in the Rulebook for each financial services activity include:

- licensing and authorization requirements;
- high-level controls;
- audit firms;
- business standards related to market conduct;
- capital adequacy requirements;
- the implementation and application of risk management protocols and systems and the prohibition and punishment of 'financial crime';
- reporting and public disclosure requirements relating to listed banks and the issuance and marketing of both debt and equity securities.

Disclosure standards

All listed companies quoted on the BSE must comply in full with the disclosure standards. These apply to both initial public offerings and set standards of disclosure with which listed companies must comply on an ongoing basis. Principally, they require disclosure of any information necessary to maintain an orderly and transparent market and/or information that is price sensitive. Key matters requiring disclosure include related-party transactions, material litigation, details of changes in capital structure and new issues, changes in share ownership, development of new products and/or movement into new markets, labour disputes, declaration or omission

of dividend distributions and defaults under banking or other financial arrangements.

Guidelines for Insider Trading

The purpose of these guidelines is to increase the focus on the handling of insider-trading issues in listed companies and thus increase confidence in the operations of the securities market.

Guidelines on Money Laundering

All listed companies must comply with the directives relating to the prevention and prohibition of money laundering at the BSE.

Collective Investment Undertakings

The CIU module, forming part of Volume 6 of the Rulebook and effective from 1 June 2007 (with a one-year transition period for existing CIUs), aims to reinforce Bahrain's reputation as the funds centre of the Gulf by allowing certain CIUs to be targeted, for the first time, at professional investors and by broadening the range of products available.

CIUs are defined as 'undertakings the sole object of which is the collective investment of capital raised from the public'. CIUs operate on the basis of risk spreading, and holdings are repurchased or redeemed out of the assets of those undertakings. The module applies to CBB licensees that carry out capital markets activities and all 'relevant persons', which means any person who is offering CIU holdings to investors resident in Bahrain and any person acting as the operator, manager, administrator or custodian of a CIU.

The module provides for retail, expert and exempt funds. Only retail and expert funds attract supervisory oversight from the CBB. The module reflects the different risk profiles of each CIU category:

- Retail CIUs are open to all investors and are subject to detailed regulation and supervision. They are subject to restrictions on concentration levels and on the types of financial instruments or assets that can be held by the fund.
- Expert CIUs may only be offered to 'expert investors', which are individuals or institutions that have unencumbered assets of at least US \$100,000. The minimum investment is set at US \$10,000 or equivalent. Whilst they are subject to diversification and asset class requirements, these are less restrictive and will allow the funds to invest in, amongst other things, real estate, commodities, unlisted securities and hedge funds.

- Retail and expert CIUs must be initially authorized by the CBB and then regulated by the CBB on an ongoing basis.
- Exempt CIUs are only required to be registered with (as opposed to authorized by) the CBB and are largely unregulated. They can only be offered to ‘accredited investors’, which are individuals or institutions with encumbered assets of at least US \$1,000,000. The minimum investment is US \$100,000 or equivalent. They are to be marketed only to investors who are able to understand and bear the inherent risks of investment in such a CIU. Exempt CIUs are not subject to any restrictions on investment policy or leverage limits.

To avoid supervisory duplication, the module provides that overseas domiciled CIUs, which are already approved by the ‘home’ regulator in certain ‘recognized jurisdictions’, are simply required to register with the CBB, prior to being marketed in Bahrain. The list of ‘recognized jurisdictions’ includes all European Economic Area member states, the United States, the Cayman Islands and British Crown dependencies. However, applications for overseas domiciled CIUs must be made by a CBB licensee.

In addition, the module makes special provision for Shari’a compliant funds. The Bahraini Islamic fund industry is estimated to be growing at a rate of 20 per cent a year, with Islamic funds currently representing US \$1 billion of the US \$9 billion of assets held in CBB registered funds.

Time will tell how significantly the new module will affect the Bahraini funds landscape and how quickly the market will mature and develop. It does demonstrate that the CBB is taking seriously its role as the single regulator and in developing standardized principles for the financial services industry in Bahrain, which reflect international best practice. In terms of encouraging foreign investment in the Middle East and Bahrain retaining its reputation as the banking capital of the Gulf, the new module – and in particular, the introduction of the ‘exempt CIU’ category – can only be regarded as a positive development.

2.7

Trust Law

Robert Brodrick, Trowers & Hamlins, in conjunction with Elham Ali Hassan and Associates

Trusts have been used for many centuries as a mechanism for keeping control of a family's assets whilst simultaneously allowing different family members to benefit. They rely on the principle of dividing legal and beneficial ownership of an asset. Until recently, the division of legal and beneficial ownership was not recognized in Bahrain which meant that anyone who purported to hold assets on trust for another, and any beneficiary of such an arrangement was very exposed. What was to prevent the so-called trustee (or his or her heirs or creditors) from claiming that the trust assets were his or her own?

Anyone wishing to set up a trust could still do so, provided the assets in question were transferred to the control of a trustee in a jurisdiction that recognized trusts. Where the assets involved were outside Bahrain, this did not pose any significant problems, because individuals are generally free to make lifetime gifts (including gifts to trusts) for the benefit of their families. Different considerations would arise in relation to Bahrain (or other GCC [Gulf Cooperation Council] based) assets because there are foreign ownership restrictions that may prevent an overseas trustee from becoming the registered owner.

The Bahraini solution

Bahrain has been taking steps to reinforce its reputation as a financial centre in the Gulf region and as part of this initiative, a new trust law has recently been introduced, issued by Royal Decree No. 23 of 2006. This aims to widen the range of services that can be offered by financial institutions so that in future they can offer Bahraini trusts.

The Middle East has many high net worth individuals, with an estimated collective wealth of over US \$1.3 trillion. Additionally, a large number of businesses in the Middle East are privately owned which means issues of succession and control are very important.

Impact of Islamic law

Islamic rules of inheritance dictate that a person's assets have to be divided between their heirs on death which can lead to fragmentation of family businesses and dilution of wealth. However, this division does not generally include assets that have been transferred to a family trust during a person's lifetime. Trusts are therefore a good way of protecting a family's assets in a flexible way that enables different family members to benefit whilst the trustee retains control of the assets, provided the Islamic rules of inheritance are not ultimately undermined.

Until recently, trusts were not recognized as a legal concept in many Middle Eastern countries, and so people had to look to offshore jurisdictions. By enacting the new law, the Bahraini authorities are trying to encourage individuals to look at Bahrain as an alternative to the offshore jurisdictions that have been used up until now. The Kingdom is one of the first countries in the region to embrace the concept of trusts, and if successful, the potential for growth in its finance industry should not be underestimated.

How does a trust work?

Trusts have been an important part of English and other common law legal systems for many years, but in other jurisdictions, particularly those based on civil law, the concept is not so widely used. Those not familiar with the concept have a tendency to view trusts with suspicion, assuming that because they have an image of secrecy, they must have something to hide. On the contrary, trusts are a useful tool to help people deal with their property efficiently and plan for the future although they are also a good way of keeping the extent of a family's assets private, particularly where they hold assets in jurisdictions with public registers of companies and land.

A trust works by a person (the settlor) transferring ownership of assets to a trustee on the understanding that the trustee will hold the assets for the benefit of a group of people (the beneficiaries). This is done in the form of a written document known as the trust instrument. The settlor can direct how the assets are to be managed and who is to benefit from them. For example, many people are concerned about the future of the family business after their death. By putting shares in a family business into trust, a settlor can ensure that the business continues to be managed in accordance with his or her wishes after his or her death.

Likewise, trust structures can bring tax advantages, particularly when an individual's assets are based in foreign countries that have inheritance and other transfer taxes. For example, it is currently possible for an overseas investor to buy UK property through an offshore trust structure and protect its value from inheritance tax. If an individual buys the same property and holds it directly it would be subject to 40 per cent inheritance tax on his or

her death (subject to a number of exemptions), regardless of whether he or she was resident in the United Kingdom.

Key features of the Bahraini trust law

The new Bahraini trust regime aims to take a flexible approach to the establishment of trusts, while also ensuring that they are managed in a properly regulated environment. Provided that the independence of the trustees is not compromised, a settlor will be able to retain some control over the trust, for example by appointing himself or herself as trust protector or reserving certain investment powers. This role allows him or her to supervise the activities of the trustees and to be involved in the making of certain decisions, for example, on investment or distribution of trust funds. The settlor can also be one of the beneficiaries.

A minimum of only one trustee is required to operate the trust, and a Bahraini trust can continue for up to 100 years. The general principle of the new law is that provided that a trust does not contravene any other laws, a settlor will be able to choose how the particular trust will function, with the rules being set out in the trust instrument.

There are always issues to consider when the settlor retains too much control over the trust assets, particularly if the trust is to withstand claims by creditors or the settlor's heirs under Islamic law. It is unlikely that a Bahrain trust could be used to circumvent the effect of Islamic succession law, particularly where local assets are involved.

There is a specific provision that states that trust assets are 'independent' property and, as such, are not available to satisfy claims against the trustee. The legislation also imposes personal liability on the trustee in certain circumstances, and in relation to the trustee's deliberate failure or gross negligence this liability cannot be limited in any way.

Regulatory framework

The new law also establishes a regulatory framework. The trust must be registered with the Central Bank of Bahrain, giving details of the settlor, the trustee, the beneficiaries and the protector. The agency is not allowed to divulge any information about the trust, except to the parties directly connected with it, unless disclosure is requested by a court or the disputes settlement committee. Likewise, the trustee is under a strict duty of confidentiality and must not reveal any information about the trust.

The legislation sets out a specific mechanism for dealing with disputes that involves the creation of a disputes settlement committee which is to be set up by the Governor of the Central Bank of Bahrain every three years. Membership will consist of two judges of the High Civil Court of Appeal, nominated by the Supreme Council of the Judiciary. The committee has

power to settle disputes that arise between any settlor, trustee, protector or beneficiary.

The law also introduces a licensing system for trustees. Each trust must have at least one trustee who holds a license to act. This system is intended to ensure a high standard of trust management and that trustees have the relevant training and expertise. The law sets out circumstances in which a trustee must cease to act, which include events such as bankruptcy and death, but also loss of capacity or cancellation of his license.

Conclusion

It will be interesting to see what effect this new law will have on Bahrain's financial industry and whether, bearing in mind that it has not yet been tested by the Courts, families will embrace the idea of setting up a Bahraini trust as a way of protecting their wealth for the next generation.

2.8

Forms of Intellectual Property and Their Registration

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Summary of the trade mark registration system

The Trade Mark Law No. 10 of 1991, amended by Ministerial Order No. 12 of 1993, was superseded by a new Trade Marks Law issued on 31 May 2006 under No. 11 of that year. The Implementing Regulations for the Law have not yet been issued but are expected in due course.

Bahrain has been a member of the Paris Convention for the Protection of Industrial Property since 29 October 1996. Claiming priority is possible. The international classification of goods and services (8th edition of the Nice Classification) for the purpose of the registration of marks is followed.

A separate application must be filed for each class of goods or services. Once a trade mark application is filed, it is examined as to its availability for registration. Trade mark applications accepted by the registrar are published in the *Official Gazette*. There is a 60-day period open for filing an opposition by any interested party. An opposition to the registration of a trade mark should be brought before the registrar by an authorized agent, or the proprietors themselves, within the prescribed period as from the date of publication. In the absence of an opposition, a published trade mark is registered and a certificate of registration issued.

It is noteworthy that trade mark rights are acquired by registration. However, a trade mark application can be opposed successfully upon producing sufficient proof of the prior use of the mark in Bahrain and elsewhere in the world.

A trade mark registration is valid for 10 years as from the date of filing the application and is renewable for further periods of 10 years thereafter. The Trade Mark Law provides for a three-month grace period for late renewal of a trade mark. If a trade mark is not renewed, the law does not allow third parties to register the same trade mark until after the lapse of three years from the date of cancellation. The assignment, authorized user and all other changes of a trade mark can be recorded once the trade mark

is registered. Such a recording is published in the *Official Gazette*. The assignment of a trade mark can be accepted only with the goodwill of the business involved.

The actual use of any trade mark in Bahrain is not compulsory for filing applications for registration, nor for maintaining trade mark registrations in force. However, a trade mark is vulnerable to cancellation and can be cancelled through a court of law by any interested party who can establish that the trade mark was not actually used during the five years preceding the application for cancellation, or that there was no *bona fide* intention of using the trade mark on the goods in respect of which the trade mark was registered unless the owner can provide justification for non-use. Unauthorized use of a trade mark registered under the law, or an imitation of such trade mark applied on goods of the same class, whether for sale, storing for the purpose of sale, or exhibiting for sale of goods bearing a counterfeit mark, or by using a mark duly registered under the law by another person to serve the purpose of unauthorized promotion of goods of the same class, are offences punishable under Bahraini law.

Requirements

The following are the requirements for trade mark/service mark applications:

1. a signed power of attorney stamped with the company seal authorizing an agent to act on behalf of the owner;
2. one of the following documents:
 - (a) certified copy of the priority document, if priority is to be claimed;
 - (b) certified copy of any corresponding home or foreign registration of the mark;
 - (c) certificate of incorporation of the applicant company;
 - (d) certificate issued by the registrar of companies;
 - (e) extract of the entry of the applicant company in the commercial register;
 - (f) certificate issued by the Chamber of Commerce.

The documents referred to in (c), (d), (e) and (f) above must indicate the specification of goods/services or the line of activity of the applicant company, and must be legalized by any Arab consulate.
3. the full name, address, nationality and profession of the applicant;
4. the list of the goods to be covered by the application, not more than six lines;
5. eight prints of the mark.

Summary of the patent registration system

The Patents and Designs Regulations of 1955 were superseded by a new Patents and Utility Models Law under No. 1 of 2004, which was issued on

28 January 2004. Although the Implementing Regulations for the new Patent and Utility Model Law have been issued, they have not been enacted and the Patent Office has not yet started accepting new patent and utility model applications. The Patent Office is still working on the details of the law for implementation.

Patents

The Law specifies that a patent shall be granted in accordance with the provisions of this Law for every invention that is new, involves an inventive step and is capable of industrial application. Such invention may relate to a new industrial product, whether imported or produced locally; an industrial method or a novel application of a known industrial method.

A patent shall also, in accordance with the provisions of this Law, be granted independently to the owner of any modification, improvement or addition to a prior patented invention.

The Law also specifies that, if a patent application has been submitted in a country that is a member of the World Trade Organization or in a country that applies reciprocal treatment with the Kingdom of Bahrain, the applicant or his successor in title may, in accordance with the conditions, terms and procedures of this Law, apply for the registration of the same invention within one year of the filing abroad. In such case, the first filing date shall be deemed a basis for the priority right.

The protection period for a patent shall be 20 years from the date of the application for registration in the Kingdom of Bahrain.

Fees shall be due on the filing of patent applications. Incremental annual fees shall also be due from the beginning of the second year following the grant of the patent until the expiration of the legal protection period.

Utility models

A utility model registration may be granted, in accordance with the provisions of this Law, in respect of any new technical addition to the shape or structure of methods, tools, machinery or parts thereof, products, devices, manufacturing processes and other devices used in commerce.

Utility model registrations shall be protected for a non-renewable period of 10 years from the date of the application for registration in the Kingdom of Bahrain.

Summary of the design and industrial models registration system

A new Industrial Drawings & Designs Law was issued on 3 May 2006 under No. 6 of that year, which supersedes the previous law (The Patents and

Designs Regulations of 1955, amended by Legislative Decree No. 22 of 1977). The Implementing Regulations for the new Law have not yet been issued but are expected later.

According to the new law, the validity of a design registration in Bahrain is for 10 years from the filing date subject to the payment of annuities. However, the Industrial Property Office has not formulated the procedures for payment of annuities. A design is renewable for a further term of five years upon completion of the 10 years' validity which makes the total protection period 15 years as of the filing date. Claiming priority is possible.

Design applications accepted by the registrar are published in the *Official Gazette* and are deemed as registered as of their publication date. A 30-day period, from the date of notification, is allowed to the applicant to appeal against a rejection by the Industrial Property Office.

Requirements

The following are the requirements for design applications:

- a signed power of attorney stamped with the company seal;
- authorizing an agent to act on behalf of the owner;
- the name, address, nationality and occupation or nature of business of the applicant;
- a certified copy of the priority document, if priority is to be claimed;
- a certified copy of the certificate of incorporation of the applicant company;
- three representations of each design.

Summary of the copyright registration system

A new Copyright Law has been issued under No. 22 of 2006 and published in the *Official Gazette* No. 2745 dated 28 June 2006 which supersedes the Copyright Law No. 10 of 1993. However, the Implementing Regulations for the new Law have not yet been issued but are expected to be issued later. Accordingly, the Copyright Office is not accepting new applications.

In order to gain protection, the publishers of works that may be subject to copyright will have to deposit three copies of the work with the Copyright Protection Office at the Ministry of Information. Original works of literature, art and science, regardless of type, importance or purpose, may be protected. This includes works of art expressed in writing, sound, drawing, photography and motion picture, such as books, writings, speeches, oral works, plays, dramatic works, musical compositions, films, phonographic works, applied art and three-dimensional works. All of these may be protected for the lifetime of the author plus 50 years following his/her death. Computer programs and software are protected under the law for 40–50 years.

In order for protection to be effective, the work of art is to be original and include personal efforts, innovation and new arrangement. The National Council for Culture reserves the right to allow publication of the work of art if the copyright holder has not done so, or if his/her heirs do not publish it within one year of being informed to do so in writing. In such case, the Ministry of Information can obtain an order from the High Court of Justice to impound the work and hand it over to the National Council for Culture, Arts and Literature, while providing the copyright holder or the heirs with fair compensation.

Infringements are prosecuted before the Civil Court of Bahrain. The court can stop the circulation of infringing works, seize and destroy them and the equipment used, estimate the infringers' proceeds and call upon experts' assessment. In addition, a period of imprisonment or a fine may be imposed.

Requirements

The requirements for copyright applications are as follows:

- a power of attorney legalized by a Bahraini consulate authorizing an agent to act on behalf of the owner;
- three copies of the work;
- a legalized copy of a Deed of Assignment if the applicant is not the author.

Summary of the domain name registration system

Batelco (Bahrain Telecommunications Company) has allowed the registration of domain names since 1999. According to the regulations, the holder of a domain name registration should actively rent space for his/her website.

Batelco has no legal obligation to screen domain name registrations and operates on a 'first come, first registered' basis. Any legal disputes arising will be forwarded to the courts. Nevertheless, a request for proof of ownership of the name (eg a trade mark registration or a company name) will be requested. Proof that an agent for that name exists in Bahrain also has to be recorded.

Once a court order has been issued to cancel the domain name, Batelco will abide by the order to cancel or amend a name. Domain names are non-transferable, once registered, unless the owner is bought out or merges with another entity. If an entity is dissolved, the domain names owned by that entity can be reallocated.

Summary of the trade secrets law

Legislative Decree No. 7 of 2003 in respect of trade secrets was issued on 14 June 2003. The new law prohibits the disclosure, misappropriation or illegal acquisition of another entity's trade secrets. A trade secret is any information held by an entity that is not generally known, derives commercial value from being secret and is subject to appropriate measures by its owner to maintain its secrecy. It is important to note that the independent conception of trade secret information by lawful means is not a violation of the trade secrets law.

The following new IP (intellectual property) laws have also been issued in Bahrain:

- geographical indications (Law No. 16 of 2004);
- integrated circuits (Law No. 5 of 2006);
- new varieties of plants (Law No. 12 of 2005).

However, the Implementing Regulations are yet to be issued.

2.9

Real Estate Law

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Introduction

Bahrain has undergone significant growth over the past decade, particularly in the degree of foreign investment in the country. The law regarding non-Bahraini property investment and development is quite fluid and appears to change depending on the degree and type of investment that the Kingdom deems desirable over time. The result of the changes to date has been the burgeoning of an incredibly popular and accessible property market.

Property ownership in Bahrain is subject to the Land Registration Law (Legislative Decree No. 15 of 1979). While Bahraini nationals have a constitutional right to own any available land in Bahrain and Gulf Cooperation Council (GCC) nationals are granted broadly equivalent rights as Bahraini nationals, ownership of land by non-GCC nationals (foreigners) was traditionally prohibited.

These prohibitions were relaxed in 2001, with the promulgation of Legislative Decree No. 2 of 2001 (Decree), which provides that, without prejudice to the rights of GCC citizens to own built properties and land, non-Bahrainis, both individuals and companies, may own built properties and land in Bahrain in any manner prescribed by earlier legislation and subject to the conditions to be prescribed by a resolution of the Council of Ministers.

While the legislative changes do allow foreign investment, the land available for foreign ownership is limited by the Kingdom to certain areas and is dependent on the intended use of the land by the proposed buyer. It is worth noting, however, that these are often areas of prime real estate showing considerable economic growth.

Foreign ownership

In 2003, Bahrain enacted legislation so that today foreigners can own real estate on a freehold basis in areas designated for foreign ownership. However, despite these changes, the Kingdom still exercises a degree of control over the location of the land that foreigners may own, the purpose

being to control the nature and degree of foreign investment. In particular, the Kingdom controls:

- the areas in which foreigners may own land;
- whether foreigners are entitled to own vacant land in the designated areas or whether they can only buy developed properties; and
- with regard to vacant land, to what use such vacant land must be put.

At the time of writing, foreign ownership of land is permitted in certain designated (mostly residential development) areas, following the coming into force of the Decree and Edict No. 43 of 2003 (as subsequently amended by Edict No. 67 of 2006) (Edict).

Under the Edict, non-Bahrainis, whether natural or legal persons, are entitled to own built properties and land in those areas of Bahrain that are designated under the Edict as follows:

- Residential properties in Areas Category (A), (B) and (C) all over the Kingdom. This widening of the right over residential properties is significant in that it encompasses the whole Kingdom for the first time, albeit in these categories only.
- Tourist and investment projects of a special nature, subject to the approval of the Ministerial Committee for Public Utilities.

The Edict also allows foreign financial institutions and industrial, tourism and monetary agencies to purchase land for the purpose of undertaking projects in such areas as are designated from time to time. At the time of writing, examples of projects that are currently designated for foreign ownership include, Bahrain Bay, Riffa Views, Amwaj Islands, Reef Island and Durrat Al Bahrain.

The right of non-Bahrainis to own land in these areas is, however, conditional on the fulfillment of two conditions:

- First, the owner must comply with the terms, conditions and procedures set out in the Land Registration Law.
- Secondly, where the owner is a corporate entity, ownership of built property and land must either be one of the company's objects or it must adopt a board resolution approving the ownership of built property and land in the Kingdom of Bahrain.

GCC nationals

The position with respect to the ownership of land by GCC nationals is simpler:

- Legislative Decree No. 40 of 1999 revokes all prior legislation concerning

the ownership of property by GCC nationals in Bahrain and provides that GCC nationals may own built properties and land in the Kingdom of Bahrain by any prescribed method of legal ownership.

- This includes inheritance and conveyance between individuals. The decree further states that, in this respect, nationals of GCC states are to be afforded the same rights as Bahraini nationals.
- Whilst the legislation does not explicitly define the expression 'GCC national', it has previously been interpreted to apply to GCC citizens as well as to GCC-owned corporate entities.

Leases

In addition to land ownership rights, foreigners are also entitled to take leases of land or buildings (or parts of them) anywhere in Bahrain. It should be noted however that lease interests are treated only as contractual rights in the Kingdom and are not registrable, although they are well-recognized by the local courts.

2.10

The Environment

*Halel Abdulrahman, Posford Haskoning Environment
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Bahrain used to be known as ‘the land of a million palm trees’ for a reason. The freshwater natural springs and forests of palm trees were spread all over the island, especially in the North. These springs were also located in the sea providing a source of freshwater for pearl divers and fishermen, and this is how Bahrain got its name (two seas; salt water and freshwater in the sea).

Unfortunately, the situation is not the same today for this little Gulf island. The environment gradually started to deteriorate; the natural freshwater springs began to dry up (mainly from unsustainable agricultural practices) and as a result, palm plantations started to die.

Bahrain now suffers a number of environmental problems including pollution of the marine and terrestrial environments, destruction of marine and terrestrial habitats and degradation of natural resources such as groundwater and soil.

The governmental authority responsible for the environment in Bahrain is the GDEWP (General Directorate for Environment & Wildlife Protection) that forms part of the Public Commission for the Protection of Marine Resources, Environment & Wildlife.

Bahrain has many laws, regulations and standards when it comes to environmental protection, but the most important legislation is Ministerial Order No. 6 of 2001 with respect to the Protection of the Environment. Most of Bahrain’s environmental laws refer to this legislation. EIA (Environmental Impact Assessment) legislation came into force in 1998, following the implementation of Ministerial Order No. 1 of 1998 with respect to the Environmental Evaluation of Projects. This order requires that all new projects or expansions to projects go through the EIA process before getting the go-ahead (or license to build) to construct or operate. Projects that this Law applies to include dredging and reclamation, those projects in sensitive or protected areas (marine or terrestrial) and industries. The environmental planning process in Bahrain is illustrated in the figure below.

Environmental planning process in Bahrain

In March 2000, the environment authority issued a ministerial order for allowing only approved consultants to carry out EIAs in Bahrain, as there were many projects getting the go-ahead from the government without proper environmental reporting or specialist detailed studies or surveys being carried out. Ministerial Order No. 3 of 2000¹ led to the official registration of environmental consultants with the authority and eventually an improvement in the environmental reporting process.

Types of projects that have required an EIA in Bahrain include large-scale residential, leisure and tourism developments, in addition to industrial areas needing a significant amount of dredging and reclamation to be carried out; large, medium and small industries (depending on process and materials used), infrastructure and road projects and sewage treatment plants.

Main impacts that have been assessed and addressed in these EIAs include the marine environment (rich seagrass habitats, mangroves, *fasht*², mudflats, large intertidal areas which are important feeding and nursery grounds and shrimp and fish habitats). This, in turn, impacts on rare and endangered species such as dugongs (the IUCN³ lists the dugong as a species vulnerable to extinction) and sea turtles (eg the green turtle in Bahrain). Bahrain's terrestrial and desert environment has also been surveyed and assessed as more and more projects are developed on land. Bahrain's desert environment is unique in that it is the main habitat for the rare and endangered Reem Gazelle, in addition to the Cape Hare and the Dhab. Over the past few years and with increased development in the area, Bahrain has lost most of its natural *wadis* (springs) which form an important feature of the desert environment. Desert plants and trees are also being replaced with large-scale development for recreation and tourism.

Pollution of the marine environment includes discharges from industries (especially illegal discharges), sewage treatment plants working over existing capacity, ships, oil tankers and ship repair yards. The types of pollution include oil and hydrocarbons, sewage, chemicals and heavy metals. Overfishing and illegal fishing in protected areas or nursery areas have also increased over the years in Bahrain.

With regards to waste management on the island, Bahrain has two landfill sites; one for domestic waste at Askar and one for hazardous waste at Hafeera. The landfill site at Askar has been receiving all of Bahrain's waste for many years. This landfill is not lined and does not have any special features for environmental protection. The Hafeera landfill, on the other hand, is a new site and has been properly lined to protect the aquifer and prevent seepage of chemicals or leachate into groundwater. This landfill

¹ With respect to environment authority's recognition of consulting firms involved in the field of environmental evaluation of projects and environmental studies.

² An area of shallow water, shoal or sandbank which may consist of rock, coral, seagrass, etc. It may be intertidal in places.

³ International Union for Conservation of Nature.

only accepts hazardous waste from certain industries in Bahrain. Recycling is very limited in Bahrain. In 2002, there was a big campaign being carried out by the Mother and Child Welfare Society for recycling of plastic, paper and aluminium waste and it worked well for a number of years. This scheme no longer seems to be active and more and more people are wondering what to do with their waste once it has been collected. The government has plans for a waste treatment and recycling facility in the near future, but in the meantime, some recyclable waste is shipped outside of Bahrain.

Air pollution is an issue in Bahrain due to the large number of vehicles and industrial activity on such a small island. The environmental authority has requested consultants to carry out a number of air quality modelling assessments to predict emissions from certain proposed projects or to assess the baseline situation from existing industries.

Soil and groundwater contamination is now being addressed in a number of industries, indicating serious commitment to clean up historical pollution. Bahrain has signed many international and regional agreements (eg for prevention of pollution, for reducing greenhouse gases (eg Kyoto) for control of ozone depleting substances, etc); however, not all these agreements are fully enforced. One of the Ramsar¹ sites (the mangroves in Tubli Bay) in Bahrain has been neglected as activities around the bay are slowly destroying the largest mangrove stand on the island. Protection of these mangroves and the bay is extremely important if Bahrain is to stick to its obligations in terms of protecting a Ramsar site.

Areas in Bahrain that are under threat include ancient palm plantations (also culturally important), shallow fasht and intertidal areas, seagrass beds and natural desert areas.

Environmental problems in Bahrain will not be solved by adding more legislation and laws, but by enforcement, monitoring and getting the most interested NGOs and people from society to do this type of work. Applying the 'polluter pays' principle is extremely important for existing industries and advising them to upgrade their operations eventually towards cleaner technology in order to avoid such pollution incidents. Designation of protected areas, compensation and habitat relocation (if possible) and rehabilitation are very important issues in Bahrain at the moment, as many large-scale developments and projects are being asked to contribute to this aspect.

Research into and the development of renewable energy options, such as solar and wind power should also be pursued and seriously implemented if Bahrain wants to move forward with the rest of the world. The challenge for Bahrain is to make changes to production levels and to make more sustainable choices and decisions for future generations.

¹ Ramsar Convention on Wetlands was signed in Ramsar in Iran in 1971. It is an intergovernmental treaty which provides the framework for national action and international cooperation for conservation and wise use of wetlands and their resources.

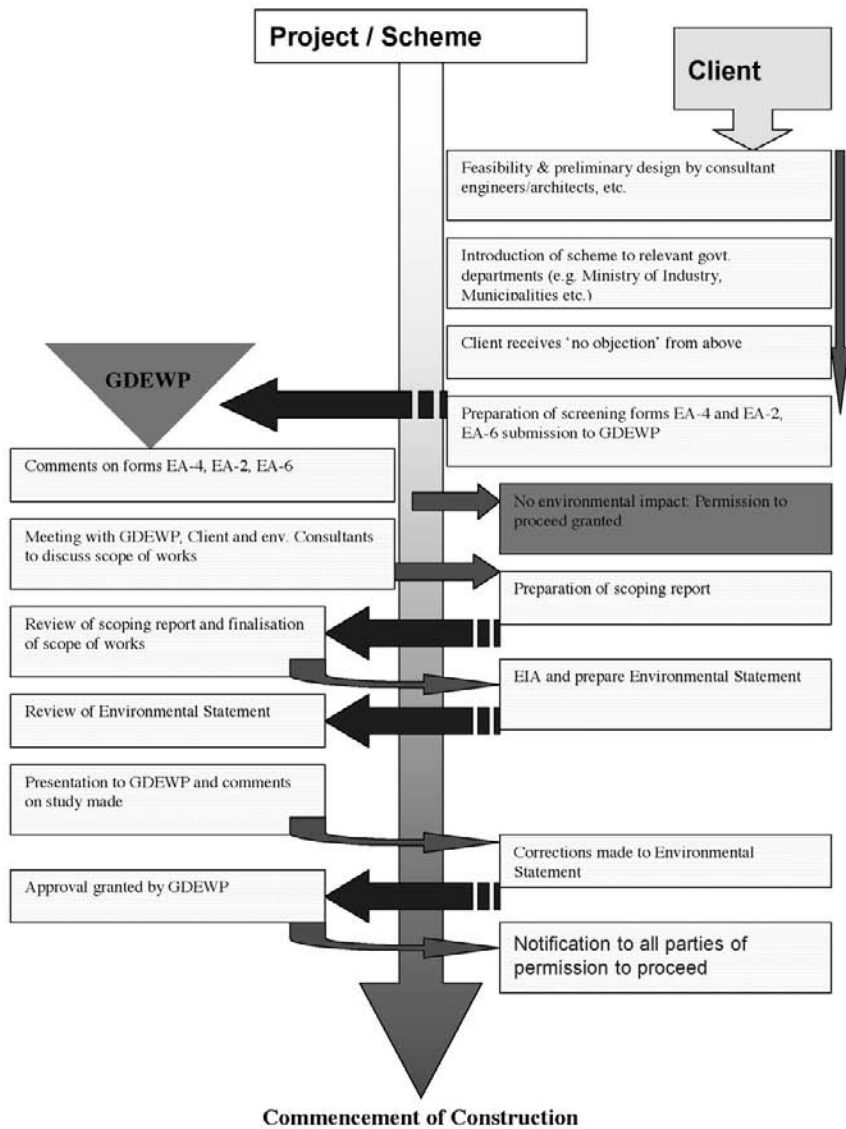


Figure 1. Environmental Planning Process in Bahrain

PART THREE

Finance Issues

3.1

Accounting, Auditing and Taxation

Jaafar Al Qubaiti, KPMG

Accounting principles, record keeping and reporting requirements

The Kingdom of Bahrain does not have its own national accounting standards. However, the BCCL (Bahrain Commercial Companies Law) 2001 requires all companies to prepare their financial statements in accordance with the IFRS (International Financial Reporting Standards). Also, companies listed on the BSE (Bahrain Stock Exchange) and all banks and financial institutions licensed by the CBB (Central Bank of Bahrain) are required to prepare their financial statements in accordance with IFRS.

Generally, the standard of financial reporting in Bahrain is high and largely consistent, as users of financial statements largely require compliance with international standards. This trend is being encouraged by more rigorous requirements amongst users such as bankers and shareholders.

Accounting principles and guidelines

The BCCL 2001 requires each registered entity to produce its balance sheet, profit and loss account and management's (directors') report for every financial year, within three months from the end of the financial year, in compliance with the IFRSs. It also requires the entities to appoint auditors to audit the financial statements, which are required to be performed according to the Bahrain Auditors Law (No. 26) 1996. This law prescribes various guidelines to the auditors in performing their duties. All auditors comply with the International Standards on Auditing while performing their audits.

The CBB, beginning from 2008, will require all the regulated entities (banks, insurance companies, insurance intermediaries, etc) and listed companies to submit their annual audited financial statements within 90 days of the financial year and to submit their quarterly reviewed financial statements within 45 days of the end of each quarter. The Law of Commerce

(decree 7/1987) provides the basis for maintenance of commercial books and retention of records.

International Financial Reporting Standards

IFRS are the new nomenclature for the earlier known IAS (International Accounting Standards). However, individually, the existing IAS will continue to be referred to as IAS and new individual standards issued by the IASB (International Accounting Standards Board) will be referred to as IFRS.

Setting and issuance of IFRS is the sole responsibility of the IASB, which is based in London and began operations in 2001. The IASB members are selected, overseen and funded by the IASC (International Accounting Standards Committee) that was established in 1973. Effective 1 January 2007, there are a total of 37 applicable standards (after excluding 10 standards, namely IAS 3, 4, 5, 6, 9, 13, 14, 15, 25 and 30 that have now been superseded by other standards) on various subjects of accounting:

IAS 1	Presentation of Financial Statements
IAS 2	Inventories
IAS 7	Cash Flow Statements
IAS 8	Net Profit or Loss for the Period, Fundamental Errors and Changes in Accounting Policies
IAS 10	Events after the Balance Sheet Date
IAS 11	Construction Contracts
IAS 12	Income Taxes
IAS 16	Property, Plant and Equipment
IAS 17	Leases
IAS 18	Revenue
IAS 19	Employee Benefits
IAS 20	Accounting for Government Grants and Disclosure of Government Assistance
IAS 21	The Effects of Changes in Foreign Exchange Rates
IAS 22	Business Combinations
IAS 23	Borrowing Costs
IAS 24	Related-Party Disclosures
IAS 26	Accounting and Reporting by Retirement Benefit Plans
IAS 27	Consolidated Financial Statements and Accounting for Investments in Subsidiaries
IAS 28	Accounting for Investments in Associates
IAS 29	Financial Reporting in Hyperinflationary Economies
IAS 31	Financial Reporting of Interests in Joint Ventures
IAS 32	Financial Instruments: Presentation
IAS 33	Earnings per Share
IAS 34	Interim Financial Reporting
IAS 35	Discontinuing Operations
IAS 36	Impairment of Assets
IAS 37	Provisions, Contingent Liabilities and Contingent Assets

IAS 38	Intangible Assets
IAS 39	Financial Instruments: Recognition and Measurement
IAS 40	Investment Property
IAS 41	Agriculture
IFRS 1	First-Time Adoption of IFRSs
IFRS 2	Share-Based Payment
IFRS 3	Business Combinations
IFRS 4	Insurance Contracts
IFRS 5	Non-Current Assets Held for Sale and Discontinued Operations
IFRS 6	Exploration for and Evaluation of Mineral Resources
IFRS 7	Financial Instruments: Disclosures
IFRS 8	Operating Segments

Apart from the above IASs and IFRSs, there are 22 Interpretations of International Accounting Standards issued by the IFRIC (International Financial Reporting Interpretations Committee, a new name to the earlier known Standing Interpretation Committee or SIC):

IFRIC 1	Changes in Existing Decommissioning, Restoration and Similar Liabilities
IFRIC 2	Members' Shares in Co-operative Entities and Similar Instruments
IFRIC 4	Determining whether an Arrangement contains a Lease
IFRIC 5	Rights to Interests Arising from Decommissioning, Restoration and Environmental Rehabilitation Funds
IFRIC 6	Liabilities Arising from Participating in a Specific Market – Waste Electrical and Electronic Equipment
IFRIC 7	Applying the Restatement Approach under IAS 29 Financial Reporting in Hyperinflationary Economies
IFRIC 8	Scope of IFRS 2
IFRIC 9	Reassessment of Embedded Derivatives
IFRIC 10	Interim Financial Reporting and Impairment
IFRIC 11	IFRS 2 – Group and Treasury Share Transactions
IFRIC 12	Service Concession Arrangements
SIC 7	Introduction of the Euro
SIC 10	Government Assistance – No Specific Relation to Operating Activities
SIC 12	Consolidation – Special Purpose Entities
SIC 13	Jointly Controlled Entities – Non-Monetary Contributions by Venturers
SIC 15	Operating Leases – Incentives
SIC 21	Income Taxes – Recovery of Revalued Non-Depreciable Assets
SIC 25	Income Taxes – Changes in the Tax Status of an Entity or its Shareholders
SIC 27	Evaluating the Substance of Transactions Involving the Legal Form of a Lease
SIC 29	Service Concession Arrangements: Disclosures
SIC 31	Revenue – Barter Transactions Involving Advertising Services
SIC 32	Intangible Assets – Web Site Costs

Record keeping

Article 25 of the Law of Commerce requires businesses to keep their commercial books and the documents supporting the entries made therein, for a period of 10 years, commencing from the date of the closing of books. It also requires that all correspondence should be kept for a period of five years, commencing from the date of despatch or receipt thereof.

Banks and companies specified by a resolution of the Minister of Commerce may keep, for the aforementioned period, microfilms of the records and documents instead of keeping the original records and documents, provided that the original copies of the documents are kept at least for a period of two years. Such microfilm copies are deemed to be admissible evidence in the courts of law of Bahrain. Further details on the information to be included in the above books and the accounting entries required are available in the Law of Commerce.

In addition to the above, the Financial Crime Module of the CBB Rulebook requires all banks and insurance companies covered by the law and regulation to retain customer identification documents for a period of five years from the date of closure of the customer accounts.

Reporting requirements

Reporting to the Ministry of Commerce

The following legal entities have reporting requirements under the BCCL:

- branches of foreign companies;
- WLL (Limited liability companies);
- OMC (Singe-person company);
- BSC (c)/BSC (Joint-stock companies).

Reporting requirements entail that all branches of foreign companies, limited liability companies and joint-stock companies have to submit annual audited financial statements to the Directorate of Commerce and Companies Affairs under the Ministry of Industry and Commerce.

The law requires that the annual financial statements should include a balance sheet, statement of profit and loss (income statement as it is named in the IFRS) and a report of managers (directors). The managers' (directors') report should cover the company's activities, the financial position and the proposed distribution of profits.

Reporting to other specific regulatory authorities

In addition, and depending on the business activity of the entity, the financial statements have to be submitted to other regulatory institutions. These largely consist of the CBB and the BSE.

Reporting to the CBB

As stated earlier, banks and financial institutions have to submit their annual audited financial statements to the CBB, in compliance with IFRS, within 90 days of the year end. The CBB also requires other periodic returns from the licensees, such as the monthly statistical returns, quarterly Prudential Information Returns, anti-money laundering reports, insurance firm return, Basel 2 compliance report and others.

In addition, all locally incorporated banks (other than the branches of foreign banks) and Islamic banks are required to submit to the CBB and publish in two local newspapers, their quarterly financial information, as reviewed by their external auditors in compliance with IAS 34. All the commercial branches of foreign banks are required to submit to the CBB and publish in a local newspaper, their half-yearly financial statements (specifically, the balance sheet and the profit and loss account), as reviewed by their external auditors. The CBB requires Islamic Banks and Financial Institutions to prepare their financial statements in compliance with the accounting standards issued by the AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions).

There are further regulatory reporting requirements laid down from time to time in line with industry and supervisory best practice. The CBB ensures that the banking industry in Bahrain closely follows the regulatory environment and reporting requirements set by Basel and other leading international regulatory authorities. Annual appointment and reappointment of the external auditors is subject to the CBB's approval.

Under the Financial Crime Module of the CBB Rulebook, licensees are required to appoint auditors to annually review the licensees' compliance with the Regulation. The CBB has agreed a reporting format with the audit firms.

Reporting to the BSE

With effect from 11 August 2002, all companies listed on the BSE are covered by the legislative Decree No. 21 of 2002, which amends the legislative Decree 4/1987 with respect to establishment and organization of the BSE. The new Decree of 2002 gives powers to the CBB to regulate the BSE.

Also, pursuant to the above-mentioned Decree, the CBB has issued revised Disclosure Standards that supersede the earlier Standards issued by the

BSE. The revised standards were issued on 3 December 2003 (Circular ODG/407/03) and came into effect on 1 January 2004. These Standards apply to listings, public offerings and sales of securities in the Kingdom of Bahrain. The Standards are intended to be used for prospectuses, offerings and initial listing documents. Companies engaged in specialized industries (ie banking, investment, insurance, etc) may be required to provide additional information as directed by the CBB.

The CBB considers that the conduct of a fair and orderly market requires every listed issuer to make available to the public information necessary for investing and to take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information. In applying this fundamental principle, the CBB has adopted the following six specific policies concerning disclosure:

1. immediate public disclosure of information;
2. thorough public dissemination;
3. clarification or confirmation of rumours and reports;
4. insider trading;
5. response to unusual market action; and
6. unwarranted promotional disclosure.

After obtaining listing on the Stock Exchange, to remain in the Official List of Companies on the Exchange, the listed companies are required to comply with various requirements, including the following reporting requirements:

- immediate announcements to be made to the Exchange for release (Article 32);
- periodic reports (Article 34);
- annual financial statements (Article 35).

The immediate announcements are as applicable under any listing agreements with stock exchanges in the world. The purpose is to safeguard the interests of the public and to disseminate adequate and timely information to the public to enable them to make informed decisions and to avoid any false information being leaked wrongly to the public.

Each listed company must submit its preliminary annual financial statements within two months from the end of the financial year, whereas the printed annual report (consolidated) is required to be submitted to the Stock Exchange and to the company's shareholders within six months from the end of the financial year. The BSE requires that the annual audited accounts, which are included in the annual report, should be prepared in accordance with the IFRS and to be audited under the International Standards on Auditing.

Also, on a quarterly basis, licensees are required to submit to the Exchange interim financial statements reviewed by the external auditors, within 90 days from the end of each quarter.

Guidelines for the issuing, offering and listing of debt securities

The CBB has issued guidelines for the issuing, offering and listing of debt securities that came into effect from 10 March 2004. All financial institutions and listed companies quoted on the BSE and all prospective local, regional and international issuers of debt securities shall comply with the rules and requirements stipulated in these guidelines.

These guidelines set out the basic conditions and requirements that have to be made as a prerequisite to the issuance, offering and listing of debt securities in the Kingdom of Bahrain. They apply to every method of issuance, offering and listing and to both new applicants and existing issuers, as well as to conventional and Islamic issues, except in specific circumstances described in the guidelines. Since these guidelines could be varied in exceptional cases, prospective issuers are advised to contact the CBB to seek specific clarifications on any matters of interest.

Taxation

There is only a limited direct tax implication in the Kingdom of Bahrain. There is no personal income tax or corporate taxation on profits earned or booked in Bahrain, on any type of business other than on oil exploration and refining companies that are required to pay a tax of 46 per cent on their income per the Bahrain Income Tax Law, Decree 22/1979.

Tax is collected in the form of property tax at the rate of 10 per cent of the rent payable on all unfurnished apartments and at the rate of 7.5 per cent of the rent payable on all furnished apartments for both residential and commercial purposes. The tenants/lessees are required to pay the property tax. Property tax is levied through the electricity and water billing system on a monthly basis.

Under *Shari'a* law, Muslims in Islamic countries are required to pay a tax called *Zakah* (or *Zakat*) at the rate of 2.5 per cent (for a lunar calendar year) or 2.5775 per cent (for a solar calendar year) on their net assets or net investments. Islamic banks and institutions may be obliged to pay their own *Zakah*, or *Zakat* on behalf of their shareholders.

Indirect taxation exists in the form of import duties, customs duties and excise duties. There is also a government levy of 5 per cent on all amounts spent by customers in a hotel.

All entities are required to pay an annual fee of BHD 20 for their registration with the Ministry of Industry and Commerce, the amount of which varies with the type of legal form of the entity. Also, the banks licensed by the CBB are required to pay an annual registration fee. All companies listed on the BSE are required to pay an annual listing fee to the Exchange.

It is a declared policy of the Government of Bahrain that no corporate taxation of a general nature is envisaged and this, combined with the absence of personal taxation on salaries, plays a significant part in attracting business to Bahrain. It follows from the absence of taxation on corporate profits of the businesses operating in Bahrain, that Bahrain has no bilateral treaties for the avoidance of double taxation.

Labour Law

As per the Labour Law for the Private Sector 1976 every company, in case of an expatriate employee, is required to pay a minimum indemnity of 15 days' salary for each completed year for the first three years and one month's salary for each year after completion of five years of service. In case of a Bahraini employee, the entity is required to deduct 6 per cent from the salary of the employee and contribute 12 per cent of the employee's salary to be paid to the GOSI (General Organization of Social Insurance), which is a fund established by the Government to manage the payment of pension on retirement of Bahraini employees in the private sector.

Apart from the above, the companies are also required to pay 1 per cent of the salaries of both expatriate and Bahraini employees as a contribution to GOSI for insurance against unemployment.

3.2

Banking, Finance and Insurance

The Central Bank of Bahrain

Introduction

Bahrain has been a focal point for international trade for more than 4,000 years, having been a vital stopping point for sailing ships transiting between Mesopotamia and the Indus Valley. In more recent centuries, the country was a major exporter of pearls to merchants across the Indian Ocean and in China and, in 1932, became the first country in the region to strike oil commercially.

Over the last 30 years, however, Bahrain has become known as a leading international financial centre, a status that has led to the country attaining the accolade of 'The Financial Capital of the Middle East'.

Banking first came to Bahrain in 1921 and remained modest in scale for the succeeding 50 years. Then, in the early 1970s, increased wealth across the Middle East, the result of the first oil boom, created a demand for a high level of banking and financial services, which Bahrain was well placed to provide.

Concurrent with this was the formation of the BMA (Bahrain Monetary Agency), which was to play an important role in creating the well-regulated and governed environment which has allowed Bahrain to attain its present status. Today, Bahrain is host to more than 400 banks, financial institutions, insurance firms and capital market companies.

From this, it can be seen that the elevation of Bahrain into a financial centre of international stature has taken less than 30 years, a rate of growth which could not have been achieved without the pursuit of policies by the Government of Bahrain that have ensured political and economic stability. Furthermore, the need to diversify the national economy away from a dependence on oil was recognized in the late 1960s, which firstly saw a move into the aluminium industry and subsequently into financial services, the undoubted success of which is ample testimony to the considerable foresight of those involved all those years ago.

Integral to the success of the sector has been the role played by the BMA, which came into being in 1973 and gave an added impetus to Bahrain's aspirations to establish a banking centre of excellence. After 33 years of

excellent service the BMA was ultimately succeeded on 7 September 2006 by the CBB (Central Bank of Bahrain), which inherits the BMA's wide range of responsibilities including maintaining, indeed enhancing, the Kingdom's international reputation as the most highly regarded and innovative financial services regulator in the Middle East region, and whose role now incorporates both the insurance sector and the capital market.

The financial services industry has grown to become a major sector of the national economy. In 2003, the industry's contribution to GDP was almost 20 per cent, compared with 1.1 per cent in 1970. But by the end of 2006, this figure had risen yet further to 25.5 per cent. FDI (foreign direct investment) in financial services in Bahrain now exceeds US \$6 billion.

The growth and development of the industry have been underpinned by a buoyant, free market economy, which is reported to have posted real growth of 6.5 per cent in 2006, and the pursuit of a prudent fiscal policy by the government over many years to ensure ongoing diversification and the maintenance of monetary stability.

This approach has clearly paid dividends as Bahrain's sovereign rating by both Standard & Poor's and Fitch stood at 'A' in 2006 and the banking system ranked alongside that of more developed countries, being rated Category B by Fitch as a reflection of its quality and intrinsic strength.

For its part, the BMA, and more recently the CBB, has pursued a regulatory and policy framework in line with international standards to provide a firm base on which financial services could flourish. In addition, the absence of foreign exchange controls and a policy of pegging the Bahraini dinar to the US dollar have provided a mixture of flexibility and stability that facilitates international financial flows.

As a result, the international financial services industry in Bahrain is one of depth and breadth. As the industry continues to grow, Bahrain remains focused on its evolving needs. A more recent phenomenon has been the growing inter-dependencies and synergies across different sectors within the industry. Such an expansion of the financial sector, indicative of Bahrain's coming of age as a financial centre, has been the reason behind the move to create a single regulator to cover comprehensively the whole financial services industry. The establishment of the CBB is a clear demonstration of the government's strong commitment to the continuous development of Bahrain as an international financial centre and to the maintenance of its leadership position in this arena.

The country's well-established, mature and vibrant banking and financial services industry represents the largest concentration of financial institutions in the Middle East. The institutions, a unique blend of international, regional and domestic players, offer a diverse range of both conventional and Islamically acceptable services, including commercial, investment and private banking, money market and portfolio management, investment advice and insurance products involving risk transfer and capital accumulation.

The CBB

The CBB is a publicly owned corporate entity established under the terms of the CBB and Financial Institutions Law of 2006, which came into being in September 2006. In succeeding the BMA, the CBB became responsible for maintaining both monetary and financial stability in the Kingdom. In pursuing those ends the CBB implements the country's monetary and foreign exchange rate policies; manages the government's reserves and debt issuances; issues the national currency and oversees Bahrain's payment and settlement systems. It also fulfils the role of sole regulator of all financial services as mentioned earlier.

Such a wide scope of responsibilities allows for a consistent policy approach to be pursued across the whole financial sector whilst also providing a straightforward and efficient regulatory framework for those financial firms operating in Bahrain.

The law establishing the CBB provides the bank with increased powers of enforcement and reinforces its independence whilst also providing for an expanded range of authority to include regulation of the capital markets and the offering of securities. An important element of the new powers is the creation of statutory offences for insider trading and market abuse. In short, the law significantly modernizes and strengthens whilst also simplifying the legislation of financial services in the Kingdom through the creation of a single regulator.

The CBB works closely with many multilateral agencies, such as the IMF (International Monetary Fund), World Bank, Basel Committee on Banking Supervision, IAIS (International Association of Insurance Supervisors) and IOSCO (International Organization of Securities Commissions), to stay abreast of international developments related to the world of finance. It also works closely with other monetary authorities and maintains especially close relations with those in London, New York, Hong Kong, Singapore and, with particular regard to Islamic banking matters, Malaysia, as well as with those within the neighbouring GCC (Gulf Cooperation Council) and Arab countries.

Such cooperation has been of vital importance in recent years as governments around the globe have sought to prevent money laundering and the financing of terrorist activities. The CBB implements the Financial Action Task Force's recommendations on money laundering and terrorist financing, and since its establishment the CBB has continued its significant upgrading of the legal and regulatory framework aimed at addressing these issues in the banking sector.

Banking

The banking system as a whole consists of both conventional and Islamic banks and is the largest component of the financial system, accounting for

in excess of 85 per cent of total financial assets. As such the sector has played a vital role in the development of Bahrain as a leading financial centre. As at the end of December 2007, banking sector assets stood at US \$245.8 billion, a rise of 31.2 per cent over the end of 2006.

Commercial banking

Commercial banking first came to Bahrain in the early 1920s, when what is today's Standard Chartered Bank established a presence there, but it was to be half a century before the sector witnessed rapid growth, at a time when the country began receiving higher revenues. Initially either local banks or branches of foreign banks were established but later in the 1970s and into the 1980s, as the regulatory environment was created, many international banks sought a presence on the island in order to derive benefit from the increasing oil revenues of the other GCC states, especially those of Saudi Arabia.

More recently the licensing of GCC-based banks has arisen, at least in part, from intra-GCC agreements that allow institutions based in one member country to operate in another as a local bank. As at the end of December 2007, there were 29 retail conventional bank licensees operating in Bahrain; of these, 14 are locally incorporated and 15 are branches of foreign banks. The consolidated balance sheet of these institutions stood at US \$18.6 billion as at 31 December 2007.

Following the early growth in local commercial banks, the BMA recognized in 1973 that the local banking community at that time had limited capacity for dealing with the large amounts of money then circulating. With this and the country's desire for economic diversification in mind, the BMA saw the potential of Bahrain becoming an international financial centre. Thus, it was that the BMA took what was to be a landmark decision to allow OBUs (offshore banking units) to operate out of Bahrain as a channel for investing the region's surplus liquidity.

Crucially, Bahrain was able to offer potential participants political stability and a relatively free economic system; a tax-efficient environment; adequate infrastructure, including world class telecommunications; readily available office and commercial accommodation and a comfortable environment in which to live and work. However, whilst encouraging international banks to come to Bahrain, the BMA remained selective, only licensing those banks of high international standing and from as wide a geographical spread as possible.

The first OBUs to start operations, Citibank and Algemene Bank did so in 1975 and, by the end of 1977, 30 OBUs had been formed and their assets had increased from US \$1.7 billion in 1975 to US \$6.2 billion in 1977. Today, the licensing terminology has changed to overcome innate concerns about offshore banking and so as at 31 December 2007 there were 85 wholesale conventional bank licensees operating from Bahrain. The assets of these as

at the same date amounted to US \$196.3 billion, which represents 79.9 per cent of the consolidated balance sheet of the local banking system.

Islamic banking

In recent years, Bahrain has succeeded in becoming the global centre of Islamic banking and finance, hosting as it does the largest concentration of Islamic financial institutions in the region, with six retail Islamic bank licensees, 19 wholesale Islamic bank licensees and seven Islamic insurance (*takaful*) companies registered as at 31 December 2007. Combined the retail and wholesale Islamic bank licensees had total assets as at 31 December 2007 of US \$16.4 billion.

Recognizing the unique characteristics of Islamic finance, the BMA was the first central banking institution to develop and issue comprehensive prudential regulations for the sector. First, the PIRI (Prudential Information and Regulatory Framework for Islamic Financial Institutions), introduced in 2002, covered the key regulatory issues related to capital adequacy, asset quality, the management of investment accounts, corporate governance, earnings quality and liquidity management. Subsequently, the PIRI package was introduced into the Islamic Prudential Rulebook in 2005, the first of its kind in the world.

To support the growth and advancement of the industry, firstly the BMA and now the CBB has been at the forefront of developing and issuing Islamic bonds (*sukuk*). A rolling programme of monthly issuances of short-term securities, *sukuk al-salam*, has been in place since June 2001. The BMA has played a pioneering role in developing the medium- and long-term *ljara sukuk* asset class, which has universal appeal as an Islamic variant of a conventional fixed income tradable instrument.

Other financial activities

In fulfilling its role as the overall regulator of the banking, financial and insurance markets, encouragement is also given by the CBB to a wide array of inter-related activities. Of particular note at this time is the desire to encourage private and investment banking, for the former of which a new license was created for the first time in October 2007, at which time the CBB's Trust Registry Office also started its operations. But these are not to the exclusion of other activities which include the provision of licenses to 36 investment firms, six of which operate Islamically; four financing companies, including two Islamic entities; 19 money changers; 36 representative offices; 11 financial sector ancillary services companies; four registered administrators and one trust service provider.

A further element of the CBB's role is the authorization and approval of mutual funds. In September 2007, there were 2,397 such funds authorized

with a NAV (net asset value) of US \$10 billion. Of these, 115 were local, comprising 72 conventional and 43 Islamic funds, and 2,282 were foreign funds.

Insurance

Bahrain's insurance industry first emerged in 1950 and has grown to become a prominent element within the country's financial services sector. In the 1950s and 1960s, Bahrain was the Arabian Gulf's major trading centre, with its merchants having established commercial links with producers worldwide, a situation that continues to this day. As trade grew, there became an increasing need for insurance to protect merchants' interests which, in turn, led to the establishment not only of an increased number of local agents of international insurance companies but also, over time, of locally owned insurance companies.

As of 31 December 2007, Bahrain's insurance industry comprised a total of 176 firms (including entities ancillary to the sector), namely: 22 locally incorporated firms, of which seven operate Islamically; 11 branches of foreign companies; 33 insurance brokers restricted to business within Bahrain and 10 licensed to operate outside the Kingdom; 43 insurance brokers restricted to business outside Bahrain, of which nine were Islamic; one insurance manager; seven insurance consultants without geographical restriction and two such consultants restricted to business outside Bahrain; six insurance representatives; two companies offering services ancillary to insurance; 18 registered actuaries and 19 registered loss adjusters. The country also hosts the leading Arab reinsurer, Arab Insurance Group (Arig), as well as two insurance syndicates, the AWRIS (Arab War Risks Insurance Syndicate) and the Federation of Afro-Asian Oil and Energy Insurance Syndicate.

Gross premium income of the insurance companies rose by more than 25 per cent in 2006 over that in 2005 to a figure of US \$308 million, whilst the profitability of insurance companies increased by 22 per cent over the same period.

The BMA having taken over regulation of the insurance industry from the Ministry of Industry and Commerce in 2002, its successor the CBB continues to pursue initiatives aimed at further growth in the insurance sector. Among these have been the introduction of frameworks specifically tailored to *takaful* companies and captive insurers; the introduction of a complete insurance rulebook, covering all aspects of insurance regulation and, during 2007, the introduction of radical new rules lowering the capital requirement of foreign insurance firms operating in Bahrain.

Capital markets

As the regulator of the whole financial sector the CBB also gives detailed attention to the country's capital market, with the ultimate aim of ensuring

Bahrain's status as the Middle East's premier market for debt and equity instruments. To achieve this, the CBB has sought to make its capital market regulations friendly to non-Bahraini issuers and investors. Since the BSE (Bahrain Stock Exchange) began operations in 1989, it has grown to become one of the leading stock markets in the region. At the outset, 29 companies were listed, a figure which had increased to 51 companies by the end of September 2007, with a market capitalization of US \$24.3 billion. Apart from these, 33 mutual funds and 15 bond issues were also listed at that date.

A major facet of the CBB's activity in the capital market is to sustain a strong regime of regulation and governance in order to promote credibility, transparency and efficiency. There are now a whole raft of rules in place setting strict new standards on the disclosure requirements of listed companies; the issuance, offering and listing of debt securities; the prevention and prohibition of money laundering activities and the overcoming of insider trading and market abuse, both of which have been made statutory offences.

3.3

Islamic Banking and Finance

John Foster, CPI Financial

During the last 30 years Islamic banking and finance has developed, evolved and thrived across the world to become a major global industry. Bahrain is recognized as being the pre-eminent financial services centre in the Middle East, across a range of asset classes such as private banking, fund management, insurance and capital markets and is noted as a pioneer in Islamic banking and finance.

Before Dubai became the darling of the Middle East, the only place to do business in the Gulf was Bahrain. The small island state remains home to numerous multinational firms with business in the Gulf. Petroleum production and refining account for over 60 per cent of Bahrain's export receipts, over 70 per cent of government revenues and 11 per cent of gross domestic product, underpinning Bahrain's strong economic growth in recent years.

One of the jewels in Bahrain's crown is its Islamic banking sector as it has always had a progressive approach to Islamic finance. There are, at the time of writing, 27 Islamic financial institutions, 24 Islamic banks and 3 banking-related institutions operating in Bahrain, which is the largest concentration of Islamic financial institutions in the Middle East. Many institutions have their Islamic banking business headquartered in Bahrain, including BNP Paribas, CITI Islamic Investment Bank, ABC Islamic, Al-Baraka Islamic Bank and UBS.

Bahrain is one of the world's most proactive and energetic centres for *sukuk* issuance, with a *sukuk* being launched on an almost weekly basis. The Bahraini government was the first country to issue sovereign *sukuk*, and one of its most popular issues is *ijarah sukuk*. The popularity of Bahraini *ijarah* has attracted international interest from conventional banks. Success in developing *sukuk* has led to other GCC (Gulf Cooperation Council) countries looking to Bahrain to manage their *sukuk* programmes.

The private sector has also enthusiastically entered the *sukuk* game. One of the most notable issues was GFH's (Gulf Finance House) US \$1 billion *sukuk* in mid-2007, which was issued to finance the bank's strategic investment portfolio, comprising its 70 per cent stake in Khaleeji Commercial

Bank in Bahrain and its 15 per cent stake in QINVEST, Qatar's first Islamic investment bank.

Manama can also lay claim to being the capital of the world's *takaful* industry. Although other centres around the world are trying to wrest control of this potentially massive business from Bahrain, it still retains a steely grip on the *takaful* industry. Bahrain's leading *takaful* companies include Solidarity, Takaful International, AIG Takaful, Takaful and Re-Takaful International Investment Company and the Arab Insurance Group.

From an already strong foundation, *takaful* is growing into a major force in Bahrain, with its leading *takaful* companies enjoying growth at more than double the level of conventional companies. Premiums for *takaful* have been growing phenomenally, showing an increase of 174 per cent between 2004 and 2005, the last period for which full figures were available.

A case study that illustrates the growth of *takaful* in Bahrain is Solidarity. Founded in 2004, it has grown to become one of the world's largest *takaful* companies by assets. Solidarity has started to forage further afield, opening operations in Qatar and Saudi Arabia and has applied for a license to operate in Malaysia in 2006.

The government is planning to reinforce Bahrain's position as a hub for the *takaful* market, to protect and develop this fledgling and potentially lucrative industry. The CBB (Central Bank of Bahrain) has been working to establish an International Takaful Association in Bahrain and make it the headquarters of the industry.

This would seem a logical step for the industry as there are so many Islamic finance bodies already in Bahrain, such as the AAOIFI (Accounting and Auditing Organization of Islamic Financial Institutions), the Islamic Rating Agency and the General Counsel for Islamic Banks. If *takaful* is to grow to the predicted US \$14 billion by 2015, and the government secures Bahrain as a hub, this sector of the financial industry could be a massive income generator for the country.

Bahrain has an extensive heritage and a progressive approach to Islamic finance. Its evolution into an international centre for Islamic banking came, in part, from a recommendation made in 1978 at the Organization of the Islamic Conference, an inter-governmental organization of 56 states that collaborates to ensure progress and well-being for the global Muslim community. There was discussion at the conference about the need for Muslims to have specific economic and financial products and services to adhere to their religious beliefs and principles. The Muslim community, both in the Middle East and worldwide, needed financial products and services that mirrored their faith in a way that conventional banking could not. Islamic banking was the solution to this requirement.

Bahrain was already emerging as a prime location for financial services in the Gulf region and was identified as the natural location to develop Islamic banking and finance. The Bahrain Monetary Agency, which has now become the CBB, played a fundamental role in the adoption of Islamic

banking in Bahrain, establishing the necessary supervisory and regulatory framework to enable this sector to flourish.

The first Islamic bank in Bahrain was established in 1979, when Bahrain Islamic Bank was licensed and its success saw further development of specialized Islamic products, including leasing, loans and investment schemes. Shari'a compliant products and services have since been introduced not only by Islamic institutions but also by conventional banks.

The growth of Islamic banking in the years following the establishment of Bahrain Islamic Bank was slow. By 1994, there were just five Islamic investment banks and one offshore banking unit. The trigger in stimulating the Islamic finance market came around the time of the Gulf War, which raised oil prices and revenues, increasing the demand for Islamic tailored investments.

The CBB has been at the forefront of providing a best practice regulatory framework for Islamic banking and finance. As the regulatory body in Bahrain, it has faced complex challenges with the Islamic finance sector. It tackled these challenges by implementing high levels of regulation and supervision in all aspects of Islamic finance. The CBB established the Bahrain Institute of Banking and Finance to facilitate Islamic finance training and education. Providing the local workforce with relevant training is a step towards ensuring the future of the Bahraini financial services sector.

In terms of regulation, the Islamic financial sector in Bahrain is subject to the same supervisory regulations as conventional banks, including any requirements of the Basel agreements. A comprehensive prudential set of regulations for Islamic banks was introduced in early 2000 by the BMA (Bahrain Monetary Agency), the PIRI (Prudential Information and Regulatory Framework). The framework covers areas such as capital adequacy, asset quality, the management of investment accounts, corporate governance and liquidity management.

As mentioned above, the CBB is surrounded by a number of key support organizations, most notably AAOIFI, the leading standard setter for Islamic financial institutions. It was founded by members from a number of Islamic countries in 1990 to increase transparency and standards for accounting, auditing and governing within the Islamic Finance Sector. AAOIFI worked closely with organizations like the International Accounting Standards Board to devise standards for reporting and accounting practices.

The CBB became the first central bank to implement the standards for the local market, which were then adopted by Sudan, Jordan and Qatar. Also, the CBB is a founder member of the International Islamic Financial Market, an independent, non-profit international organization aimed at ensuring the continued growth of Islamic banking and finance as a viable alternative to the conventional financial system.

In response to the need for an intermediary agency to underwrite Islamic financial trading, the LMC (Liquidity Management Centre) was developed in Bahrain in 2002. The basic aim of the LMC was to create an active

secondary market for short-term Shari'a compliant treasury instruments for Islamic banks, helping to boost the liquidity of the Islamic banking market and creating additional investment opportunities for financial institutions and investors.

The LMC, which commenced commercial operations in May 2003, is the first of its kind and provides a local and international stimulus to the Islamic banking industry by providing liquidity management in line with Shari'a principles.

In 2006, the CBB granted a license for an Islamic investment advisory/consultancy firm specializing in structuring Islamic commodity funds, and also granted a license for the establishment of an Islamic broking company, which will enable liquidity clearing in the region.

The GICC (Global Islamic Clearing Company) was established as a joint venture between Bahrain-based IFC (Islamic Finance Consultants) and the UK-based financial services firm, Dawnay Day Global Investment. The GICC undertakes Islamic assets facilitation and liquidity clearing from its base in Bahrain. Currently, liquidity management by Islamic banks is largely transacted through commodity *murabaha* contracts via brokers in London. With the establishment of the GICC, Islamic banks in Bahrain and the region will be able to manage their wholesale and retail liquidity more efficiently in the regional time zone. The Bahrain operation of GICC will provide a platform in the region for Islamic banks to interact, raise and place funding.

The first Islamic rating agency was formed in Bahrain. The International Islamic Rating Agency was established to support Shari'a compliant banks and mutual funds and help them penetrate the international market. The agency rates Islamic banks and their financial instruments to help them offer 'credible products'.

In May 2005, the VC (Venture Capital) Bank, headquartered in Bahrain, became the first Shari'a compliant venture capital bank in the world. The establishment of VC Bank followed the founding of the Bahrain-based Gulf Venture Capital Association in February 2004.

Finally, BFH (Bahrain Financial Harbour) opened its doors for business early in 2007. This sophisticated complex is rapidly becoming the focal point for Islamic Finance in Bahrain and, indeed, the whole Gulf, as businesses gravitate there to be part of the Kingdom's financial hub where they can cooperate, innovate and compete with their peers.

The key to the growth of Islamic finance is innovation. The industry was created through innovation and will grow through innovation. A concentration of expertise, such as that in Bahrain, only serves to place this small island state at the forefront of the Islamic banking revolution.

3.4

The Insurance Environment

Stephen Wagstaff, AXA Insurance Gulf B.S.C.

Introduction

The insurance industry in Bahrain continues to form a key and growing element of the country's development, with a greater number of companies looking to set their regional headquarters in the Kingdom. The CBB (Central Bank of Bahrain) has also continued implementing its strategy for the insurance sector, based on Bahrain's role as the region's leading insurance centre.

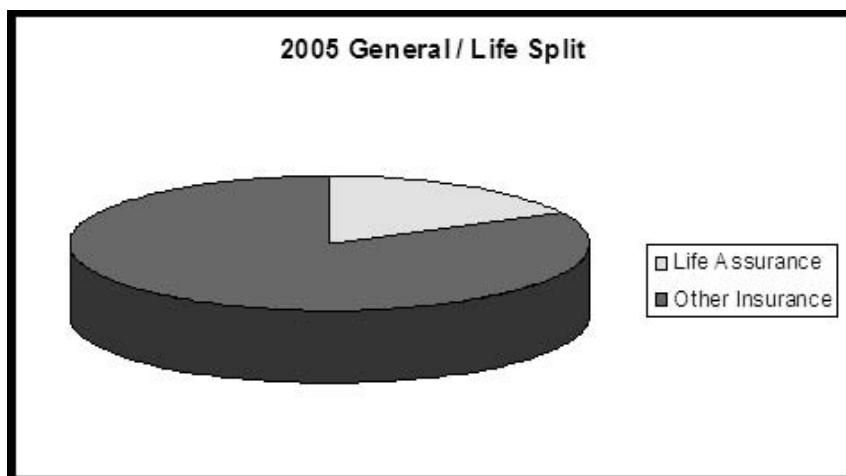
The Market

The Bahrain insurance market, when compared with that of many other Arab countries, is relatively sophisticated with a good range of insurance providers and ancillary companies, providing varied and competitively priced products and services. The latest available figures, as at end-2005, showed that the industry comprised 12 national and 8 non-national insurers transacting direct insurance business, and 30 intermediaries and 37 other companies providing a variety of ancillary needs from loss adjusting to actuarial analysis.

Gross premiums in 2005 totalled 94.9 million Bahraini dinars (BHD) (split as to Life BHD 16,607,000 and General BHD 78,297,000), a 5.3 per cent increase over 2004.

While the premium income generated from the insurance market in Bahrain is one of the smallest of the Arab countries, the proportion of insurance premium income per capita, compared with its GDP, is the highest throughout the countries of the GCC (Gulf Cooperation Council). However, this proportion still remains approximately five times smaller than that of the United Kingdom, thus demonstrating relatively low penetration and correspondingly high growth potential within the local market.

Bahrain has also encouraged in the past the growth of an offshore insurance sector with around 60 companies registered as 'exempt'. Many of these are trading in Saudi Arabia and utilize Bahrain as an offshore centre due to its developed infrastructure, minimal regulation, zero corporation tax and proximity to the Kingdom. Offshore companies (registered as 'exempt')



are not permitted to trade in Bahrain. The number of these offshore companies has reduced following the implementation of Saudi insurance legislation. However, there may be a corresponding growth in regional, reinsurance and captive companies registered in Bahrain and servicing the Saudi and Middle East marketplace.

Table 1. Insurance companies and organizations registered in Bahrain

	2005	2004	2003	2002	2001	2000
National Ins & Reins Cos.	12	12	12	9	10	10
Branches of Foreign Ins Co.	8	9	9	9	9	9
Exempt Ins Companies	60	73	84	81	83	74
Representative Offices	6	7	7	7	7	6
Insurance Brokers	30	29	25	23	22	22
Other Ins-Related Cos.	31	24	24	22	18	18
Total	147	154	161	151	149	139

According to CBB statistics at end-2005, the Bahrain insurance industry employed 1,003 people with 63 per cent of the workforce being Bahraini nationals.

Table 2. Local insurance market workforce 2001–2005

	Bahraini	Non-Bahraini	Total	% of Bahraini
2005	634	369	1003	63
2004	572	351	923	62
2003	499	319	818	61
2002	499	339	838	60
2001	519	335	854	61

Government legislation for regulation of the insurance industry continues to be overhauled to provide greater security to policyholders. The CBB is committed to enhance the Kingdom's status as the region's insurance centre. In this regard, the CBB initiated a number of key measures in 2005.

Firstly, it introduced IRFS 4 (International Reporting Standard 4) for the year starting 2005, which has had a significant impact on key figures reported by insurance firms for 2005 especially in the life sector, as several contracts were reclassified.

In April 2005, the CBB introduced a comprehensive rulebook for the insurance sector which specifically addresses 28 core principles for effective insurance supervision. It also goes further in developing specific regulations that deal with the particular features of *takaful* and *retakaful* operations.

The CBB continues to review their comprehensive regulatory framework that provides for a clear, transparent and consistent regulatory process. Further details on the CBB can be found at www.cbb.gov.bh.

The industry's professional body, the BIA (Bahrain Insurance Association) provides a common platform for all insurance companies and supplementary service companies operating in Bahrain. The BIA's objectives include, *inter alia*, increasing the public's awareness of insurance needs and closer liaison with government bodies. In close association with the BIBF (Bahrain Institute of Banking and Finance), the BIA provides high-quality training and self-development for the industry's workforce. For further information on the BIA, please visit www.bia-bh.com.

Personal insurance

In comparison to many other Arab countries, other than the UAE, personal insurance in Bahrain is relatively well developed, providing a variety of good quality and competitively priced base products.

Motor insurance is the only class of insurance that is compulsory, and it is a legal requirement for all vehicles (including those visiting from neighbouring countries) to be insured for third-party liability risks.

Unusually, the legal system in Bahrain permits individuals to pursue compensation claims directly with the insurance company of an 'at fault' driver, rather than holding the driver personally responsible or the driver seeking indemnity from his insurance company. The majority of death and injury claims are negotiated directly with insurance companies whereby quantum is mutually agreed, thus avoiding costly legal action. However, due to increased expectations of compensation awards, insurers are reluctantly becoming increasingly involved in civil court actions. Death awards range from US \$34,000 to US \$160,000, with the size of the award dependent on status and the number and age of family dependants. Awards for moderate/serious personal injuries can range from US \$100,000 to US \$500,000+, with a medical committee deciding upon a percentage of disability and reporting to the court for a decision on the award. Court awards continue

to rise and levels of awards can be unpredictable, making product pricing and consistency a difficult objective.

The minimum legal requirement covers third parties for an unlimited amount in respect of bodily injury and a limit of US \$1.33 million in respect of property damage. Some insurers will provide additional cover by increasing the property limit and extending the definition of third parties to cover family and spouse.

The government has imposed a vehicle registration system similar to that of the United Kingdom, whereby all vehicles must have valid insurance cover prior to first registration during the purchase of the vehicle. In addition, all vehicles over four years old are required to have an annual safety inspection, similar to the MOT (Ministry of Transport) principle in the United Kingdom, and a valid insurance must be provided at this time in order for re-registration to be completed.

Despite a good road infrastructure, as in many Arab countries the frequency of accidents is relatively high. In addition, the high cost of vehicle repairs and spare parts, combined with intense price competition between insurance companies means that comprehensive motor insurance is not viewed as a particularly attractive class of business for insurers.

Third-party motor insurance is viewed as even less attractive to insurers, as they are restricted from increasing premiums above a set level. The CBB imposes minimum premiums on a scale in accordance with the cubic capacity of the vehicle, and this is designed to protect the consumer and encourage all vehicle owners to insure for the minimum legal requirement. It is anticipated that tariff rates for young drivers and substandard risks may be increased, whilst more prudent drivers will be rewarded, bringing Bahrain into line with more sophisticated insurance markets.

While over 40 per cent of all vehicles on the road are only insured for third-party liability risks, there remains a good choice of quality products aimed at those wishing to insure their vehicles for comprehensive cover. Indeed, in recent years the industry has introduced added value benefits, based on the UK philosophy, by providing such benefits as helplines, breakdown services and free courtesy vehicles when the insured vehicle has been involved in an accident.

Other traditional personal lines of insurance such as home, travel and medical are also available from the local marketplace. Such insurances are more commonly purchased by expatriates; however, there has been a noticeable increase in demand from the local population in recent years and this is expected to continue as the economy develops, thereby enhancing living standards.

While many expatriates insure their contents and personal belongings, the industry anticipates a greater increase in demand from the local population, especially as many householders suffered damage and loss following two significant storms in recent years. There has also been an increased awareness of a steady rise in the incidence of crime (which is still relatively low when compared with most Western countries).

Individual medical, life and investment business forms a very small proportion of the insurance industry and is viewed as a developing market. Choice and products are limited but insurers are currently developing their products and distribution channels for future expansion in this area.

The distribution network for personal insurance remains relatively simple with the vast majority of business being conducted directly between insurance company and policyholder. Indeed, it is still common for the individual to undertake the transaction in the insurance company offices. However, credit card payments are more common and insurance companies have developed other payment distribution networks. Fully integrated e-commerce facilities to allow a 'one-stop' transaction are not yet available, although some companies provide online quotation systems.

Insurance schemes with banks and other lending institutions are increasing. The combined lending appetite of retail banks and the demographics of Bahrain have led to a credit boom, and credit life and purchase protection are now major bank-related insurance purchases. There is a gradual crossing over of borders between insurance companies and banks on financial products and the beginnings of bancassurance. Banks are becoming a key distribution source, so a single regulator certainly makes sense. Insurance brokers generally deal with corporate insurances.

Corporate insurance

Corporate business forms the majority of insurance transacted in Bahrain. The bulk of this business is government- or quasi-government related, where the State owns the assets or has a major financial interest. This would apply specifically to a majority of the petrochemical and hydrocarbon industry. Government business can only be placed with insurers registered as national companies. However, due to the complexity and significant exposure of many of these risks, a significant proportion is reinsured in other markets such as those in the United Kingdom.

Many international companies executing contracts with joint venture partners in Bahrain often use one of the international firms of insurance brokers to advise and negotiate insurance coverage. Competition for corporate business is very keen due to the relatively modest size of the market compared with the number of insurers. However, service levels can differ widely so it is worthwhile carrying out some referrals before committing oneself.

Risk management advice is limited and, in the absence of a local fire protection association, insurance companies often rely upon the fire brigade to enforce standards. The fire brigades are well equipped and regarded as being among the most effective in the Middle East. However, significant fires are not uncommon due to a variety of reasons, including overcrowded and non-sprinklered buildings and warehouses, age and lack of maintenance

of buildings and general poor risk management and loss management techniques.

Bahrain-based reinsurance syndicate AWRIS (Arab War Risks Insurance Syndicate) provides reinsurance cover for political and war risks within the Middle East and Africa. This facility has been utilized by the Bahrain insurance industry by reinsuring the vast majority of sabotage and terrorism risks with AWRIS. This action was taken in 1996 during the times when Bahrain suffered from intermittent agitation and some property was damaged by incendiary devices and the like. The intention of placing this cover with AWRIS was to bring some consistency into the marketplace and provide continuity and protection to both insurance companies and policyholders alike. While such trouble has subsided for some time now, the facility remains in place, albeit at reduced premiums due to reduced exposure.

As Bahrain expands its industrial base, spawned from both the downstream oil activities and the aluminium-related activities utilizing aluminium generated by one of the world's leading smelters, the need for marine cargo insurance has expanded significantly and forms an integral part of the insurance requirements of many industrial companies. Recent development and expansion of the textile industry, exploiting Bahrain's quota share export agreements, has also led to greater demand for marine cargo insurance. The recently signed free trade agreement with the United States is seen as providing a boost to Bahrain's economy over the next five years.

Port facilities in the main port, Mina Salman, are excellent, with modern handling techniques, and underwriting marine cargo risks causes few problems compared with some other Middle East countries. Greater improvements will take place once the new Shaikh Khalifa bin Salman Port at Hidd replaces Mina Salman in 2008.

Construction-related insurances have seen a boom in recent years with many projects having been created, Amwaj Residential, Bahrain Financial Harbour and the new World Trade Centre to name a few. As such there is a strong growth in this insurance class.

Employee benefits are an important element of any HR manager's responsibilities, and there is an adequate choice of insurance-related benefits to be found within the Bahrain insurance industry. However, the GOSI (General Organization for Social Insurance) does provide private sector employees with compensation due to accident and injury in the workplace and an income for Bahraini nationals when they retire.

The retirement benefits for Bahraini employees are dependent upon the contribution period to social insurance, whether such period is continuous or interrupted. The contribution is as follows:

Table 3. Social insurance contribution

	Previous monthly contribution (%)	Revised monthly contribution (w.e.f. 1 June 07) (%)
For Bahrainis		
Employee	5	7
Employer	10	12
For Expatriates		
Employee	0	1
Employer	3	3

Expatriate staff are covered under the GOSI arrangement for accidents and injury in the workplace but are not eligible for the retirement scheme; however, they do receive an end-of-service benefit from their employer, based on the length of completed service.

While a significant number of employers rely purely on the above system of benefits for employees, an increasing number are purchasing other benefits such as group life, personal accident and medical expenses cover. Group life tends to be placed by insurance companies on a reinsurance basis due to the specialist underwriting expertise required for this class. Personal accident schemes are commonly placed in conjunction with group life cover and usually underwritten locally.

Medical facilities in Bahrain are relatively good. The two major public hospitals (Salmaniya and Bahrain Defence Force) are, between them, quite capable of performing operations such as open-heart surgery and even treating some cancers. There are five major private hospitals also providing a good quality of service for the majority of medical needs. However, many expatriates would probably wish to seek treatment in their home countries for major medical conditions and therefore a good medical insurance policy including 'emergency evacuation benefit' should be considered essential.

Although there is yet no statutory obligation for employers to provide medical insurance in Bahrain, this is being introduced in other Gulf countries and is being considered by the Bahrain Government. Government officials are proposing a five-stage plan to make private health insurance compulsory for all non-Bahrainis by 2013 to reduce the strain on government health services. Health Minister Dr Nada Haffadh has confirmed that the ministry is already working on the preliminary stages to introduce compulsory health insurance for some expatriates by 2008. It wants first to introduce compulsory insurance for expatriates working at large companies with over 500 employees and gradually expand it to cover those at smaller firms.

There are currently 400,000 non-Bahrainis entitled to unlimited health services at government hospitals, health centres and SMC (Salmaniya Medical Complex) Accident and Emergency Department. Foreign residents

account for about 39 per cent of the total population and 72 per cent of the total workforce.

The Bahrain Government recognizes that action must be taken now to address the increased demand on health resources and aims to provide enhanced and higher quality health care for Bahrain to meet the health care challenges ahead through more private sector partnerships, patient choice and planned mandatory insurance for expatriates in the short term. In the meantime, it is a standard practice, especially among multinational companies, to include private medical insurance as part of the employee benefits package for expatriates at management and senior technical levels. However, the quality of cover provided varies enormously and prospective employees need to check that the cover meets their needs.

Conclusion

Under the supervision of the CBB, the insurance industry continues to develop. However, penetration levels continue to remain low and service is variable. Bahrain is seeking and gaining credibility as a regional centre of excellence, and it is anticipated that the industry will focus on a stable number of domestic insurers with increased appetite for risk but is already seeing a significant increase in numbers of quality international reinsurers, brokers, captives and *takaful/retakaful* insurers entering the market.

3.5

Regulation of Takaful

Philip Dew, P.D. Business Information Middle East Limited

Introduction

Takaful has become an increasingly important aspect of the insurance industry in Bahrain, such that in April 2008 there were 16 *takaful* companies licensed in the country. The rise seen in the *takaful* sector has been driven by an increasing call for Islamic products by the general public and has proved successful on the back of a strict regulatory environment imposed in recent years by the Bahrain Monetary Agency and its successor the Central Bank of Bahrain (CBB).

The basis for operating a takaful business

All *takaful* firms licensed in Bahrain are required to operate according to the *alwakala* model, under which shareholders in the firm derive their returns in the form of a specific consideration known as the *wakala* fee. Furthermore, such firms must manage all assets invested on behalf of *takaful* funds in accordance with the *almodaraba* model, under which the *takaful* operator receives a percentage of the profits generated from the investment portfolio.

The *wakala* fee charged must be directly proportional to the costs associated with establishing and maintaining any given contract. Importantly, policy holders of *takaful* funds must be made fully aware of the level of both the *wakala* and *takaful* fees, which the CBB anticipates will be calculated on a wholly equitable basis. In this regard, the CBB recognizes that for general *takaful* contracts (ie general insurance business) the fee would normally be standard where the contracts were of a specific nature and duration, whereas in the case of family *takaful* (ie long-term insurance business) higher fees are acceptable in the earlier years in anticipation that they will move lower over the longer term.

Segregation of funds

Insurers carrying out family *takaful* business must comply fully with the capital adequacy requirements laid down. These include:

- the maintenance of separate books of account for each kind of business;
- the keeping of any additional books of account required for either its general or family *takaful* business; and
- the maintenance of separate records of all transactions undertaken for each kind of business, which themselves must be carried to and from a separate fund or funds.

Additionally, a *takaful* firm must keep what accounting and other records as are considered necessary in order to enable identification of assets and liabilities representing or attributable to the fund or funds maintained for each kind of business. These must in turn comply with those accounting standards laid down by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI).

A *takaful* firm's assets allocated to a *takaful* fund must only be applied for the purposes of the fund to which they are attributed and must not be made available for any other purpose of the *takaful* firm. This does not prevent the reimbursement of expenditure borne by the shareholders in discharging liabilities wholly or partly attributable to a fund or funds. However, this does not apply to the payment of management fees of a fund to a *takaful* manager even where the manager is the shareholder provided prior approval is obtained from the Shari'a supervisory board, nor does it prevent a *takaful* firm from exchanging, to a fair market value, insurance business and assets of any fund for assets of the insurer, including assets held by another fund or the shareholder.

Any *takaful* firm carrying on business in Bahrain must ensure adequate arrangements for ensuring that transactions involving its assets do not operate unfairly between any or all of the *takaful* funds' and shareholders' assets.

Should the CBB find it necessary to impose any penalty on a *takaful* firm or requires such a firm to compensate participants for any wrongful act occasioned by the firm or one of its representatives, the financial penalty or compensation must not be paid from a *takaful* fund nor must it ultimately be reimbursed as part of the management fee.

Capital adequacy and solvency

All *takaful* funds are subject to capital available and solvency criteria, with the former of these being defined as the participants' equity (ie accumulated revenue surplus less expenses) calculated in accordance with AAOIFI

accounting standards and adjusted by any reductions to the capital. Additionally, every fund must maintain and calculate its available capital in order to meet the solvency requirements of each fund, as if each *takaful* fund were a separate, licensed insurance firm.

For the purpose of calculating the available capital of a *takaful* fund the insurance business amount is, in the case of general *takaful* business, the general *takaful* fund's assets (excluding any assets in the family *takaful* fund) and excluding any reinsurance recoveries. As for the family *takaful* business amount, this is the value of the family *takaful* fund's assets (other than assets in a general *takaful* fund) and excluding reinsurance recoveries and assets required to match property-linked liabilities.

Should a *takaful* fund's available capital fail to meet or exceed the solvency requirements laid down, the capital available must be increased by way of a free loan from the *takaful* company's shareholder fund.

In the case of a family *takaful* fund, the free loan may be provided by another family *takaful* fund of the same *takaful* firm where:

- the lending family *takaful* fund has assets in excess of that required to meet its own margin of solvency;
- the free loan does not adversely impact the lending *takaful* fund's own margin of solvency when making the loan and where there are reasonable grounds to believe there will be no adverse impact in the future;
- the making of such a loan will not adversely impact the reasonable expectations of the policy holders of the lending *takaful* fund;
- the actuary has approved the making of such a loan having considered fully all the circumstances of the fund;
- no repayments of any shareholder free loans can be made by a borrowing *takaful* fund where amounts remain outstanding on free loans from another *takaful* fund.

Furthermore, where the *takaful* firm's shareholder fund provides free loans to the *takaful* fund to enable the fund to meet its required solvency margin, the *takaful* firm may do so only with the CBB's prior written consent. In considering any such request the CBB requires, as a minimum, that the *takaful* firm undertakes to include a specific note in its financial statements explaining the circumstances of the arrangement and its implication for shareholders. This requirement also applies where loans emanate from one family *takaful* fund to cover a shortfall in another *takaful* fund.

In those cases where the above is applicable, the capital-available calculations must also be applied to the shareholder fund to ensure that its available capital is adequate to meet the solvency requirements of the *takaful* fund that cannot be met by the *takaful* fund itself due to a shortage of available capital.

A *takaful* firm may exclude from its fund liabilities any amounts borrowed from the *takaful* fund as long as:

- (a) the loans are free loans, established in accordance with Islamic principles and the Shari'a supervisory board has approved the terms and conditions of the loans;
- (b) the loans rank for repayment on any winding up of a company only ahead of the ordinary shares of the company and, to avoid any element of doubt, must be subordinated to all participants' and other creditors' obligations of the *takaful* fund;
- (c) where loans have been made to a *takaful* fund and they have not been counted as a liability of the relevant fund then an equivalent amount must be deducted from the company shareholders' capital resources;
- (d) where the loans have been made by a *takaful* fund those loans may only be repaid out of that fund's future surpluses.

Except in regard to family *takaful* funds, a *takaful* fund is specifically prohibited from making loans to another fund or to any other party, including the *takaful* operator (the shareholder fund); a person in a controlled function; a participant (a policy holder); or someone with a close link to the *takaful* firm.

Except under circumstance defined below, every *takaful* fund must calculate its required margin of solvency as if it were a licensed insurance firm incorporated as a joint-stock company in Bahrain. The exception arises in the case of a newly incorporated *takaful* insurer in its first year of operation when the *takaful* fund is exempt from meeting the required margin of solvency to enable it to build up its capital base. After the first year, should it not meet its solvency requirements, the CBB expects the shareholders of the *takaful* firm to cover any shortfall by meeting the requirement by way of a free loan to the *takaful* fund as well as meeting those requirements defined earlier.

Finally, and with the exception of a company in its first year of operation, should any *takaful* fund fail to meet its required solvency margin, the *takaful* operator will be prevented from writing any new *takaful* business until such time as that fund is again operating within the required solvency margin requirements.

Distribution of a surplus

Every *takaful* firm must develop a policy for determining the surplus or deficit arising from *takaful* operations, the basis of distributing that surplus or deficit between the participants and shareholders, and the method of transferring any surplus or deficit to the participants. The policy developed must take into account all AAOIFI standards including Financial Accounting Standard 13 "Disclosure of Bases for Determining and Allocating Surplus or Deficit in Islamic Insurance Companies". The policy so developed must be declared to the CBB and must be written into every policy sold by the firm.

Furthermore, the policy once approved by the CBB must not be amended or changed without the approval of the CBB and the Shari'a supervisory board.

More than one policy may be developed where the *takaful* firm offers different types of insurance products. In any event, the company must have separate policies in respect of its general business and its long-term business.

Annually, every *takaful* firm must determine any surplus or deficit arising on each separate *takaful* fund. In the case of a family *takaful* fund the surplus or deficit must be determined in consultation with the actuary. No *takaful* firm may make any distributions to participants if either the *takaful* fund does not, or by making the payment would not, meet all the capital available and solvency requirements laid down.

Shari'a supervisory board

Any firm authorized to conduct insurance according to *takaful* principles must establish a Shari'a supervisory board. It must also comply with AAOIFI Governance Standard Number 1 "Shari'a Supervisory Board: Appointment, Composition and Report". The function of the Shari'a supervisory board is to ensure full compliance in the *takaful* company's operations with the principles of Shari'a and to provide advice and guidance to the company's board of directors and management in all aspects of the company's activities.

In regard to overseas *takaful* firms, the requirement to appoint a Shari'a supervisory board may be waived by the CBB but only where the firm's parent company has appointed an equivalent board of sufficient expertise and credibility.

Any company licensed to conduct *takaful* business in Bahrain must comply fully with all other AAOIFI governance standards for Islamic Financial Institutions. Whilst full compliance with Governance Standard Number 1 is a CBB requirement, encouragement is given to all *takaful* companies in Bahrain to comply fully with all such standards. It should be noted that the office of a member of the Shari'a supervisory board is a controlled function as alluded to earlier and that the requirements as defined are additional to other high level control requirements contained in this article.

3.6

Bahrain Stock Exchange

Ali Al Mansoor, Bahrain Stock Exchange

The BSE (Bahrain Stock Exchange) is an independent institution managed by a board of directors chaired by the Governor of the CBB (Central Bank of Bahrain) and consists of eight members representing the government, the private sectors and the brokerage firms. The BSE was established by Amiri Decree No. 4 in 1987 and officially commenced operations two years later in June 1989. Financial instruments listed include ordinary and preferred shares, bonds/Islamic *sukuk* and mutual funds. The BSE, which is regulated by the CBB, has three indices that track the market's performance: the Bahrain All Share Index, the Dow Jones Bahrain Index and the Esterad Index. In general, GCC (Gulf Cooperation Council) nationals are allowed to own up to 100 per cent of the shares of listed Bahraini companies on the BSE while non-GCC nationals are allowed to own up to 49 per cent.

Over the years, the BSE has grown to become one of the leading emerging stock markets in the region. Starting off with 29 listed companies back in 1989, the number of listed companies grew to 51 in November 2007. From a total of 51 listed companies, 44 companies are Bahraini and seven are non-Bahraini. The number of bonds/*sukuk* issues has increased from 1 in 1994 to 17 in November 2007, and the number of mutual funds rose from 1 in 1995 to 33 in November 2007.

Since the beginning of 2007, the BSE has undergone some developments and initiatives in order to support its strategy of enhancing its competitiveness in the region and attracting more liquidity into the market. Those include upgrading the technical infrastructure in order to increase its efficiency to handle more orders. In addition, the BSE has taken some initiatives aiming at promoting trading on the exchange, and encouraging small investors to increase their contribution to the trading activity; this is to make investment in securities more profitable. Those initiatives included exclusion of the odd lots market from the trading platform; this is to provide small investors with accessibility to trade in the regular market along with all types of investors to benefit from a better pricing mechanism applied in the regular market. The BSE also raised the minimum amount of special orders from 50,000 Bahraini dinars (BHD) to BHD 500,000. During this year, the board of the BSE approved BSE's relocation to its new premises at Bahrain Financial Harbour. With relocation to the Financial Harbour, the

BSE aims to provide investors with a fair and well-regulated trading platform located in a technologically advanced financial environment.

In an effort to enhance its relations with GCC stock markets the BSE signed a MoU with Abu Dhabi Securities Market. It also signed a cooperation agreement with the LSE (London Stock Exchange) in 2007. The MoU signed with Abu Dhabi Securities Market mainly aims to strengthen and widen the areas of cooperation between the two markets in the areas of mutual expertise and the exchange of information. Signing such an MoU with Abu Dhabi Securities Market will also encourage companies to cross-list their shares in both the markets. Similarly, the agreement signed with the LSE is aimed at strengthening the relationship between the two exchanges. With the LSE's 200 years' accumulative experience, the BSE will greatly benefit from this cooperation in further developing and enhancing its operations.

Looking into the BSE's performance for the first nine months of 2007, the Bahrain All Share Index recorded a growth of 14.72 per cent, increasing from 2217.58 points at the end of December 2006 to 2543.92 points at the end of September 2007. The market capitalization of Bahraini shareholding companies surged to BHD 9.157 billion at the end of September 2007, from BHD 7.963 billion at the beginning of January 2007, posting an increase of 14.99 per cent. As non-Bahrainis are allowed to own up to 100 per cent of Bahraini shareholding companies, their contribution accounted for 52.94 per cent of the total value of shares traded during the period (January–September 2007).

As 2007 came to an end, new listings were expected to be ready to take their place on the BSE in 2008. As a result, more investment opportunities will open up for investors thus creating more activity on the exchange. The BSE is also eager to strengthen its relations with other stock markets in order to open up new horizons of cooperation and benefit from the exchange of experience and expertise.

Appendix

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